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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

## No. 671

CLYDE H. FINLEY, RECEIVER, AND CORONADO COAL COMPANY, DENMAN COAL COMPANY, ET AL., PLAINTIFFS IN ERROR,

*vs.*

UNITED MINE WORKERS OF AMERICA, P. R. STEWART, FRED HOLT, ET AL., ETC., ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

VOLUME II

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Mr. Warrum: We waive the cross-examination.

Mr. Lucas: We will read the cross examination and the redirect.

(Reading).

"Q. What mine did you work at? A. Sir?
1275 Q. No. 6?

A. I was hauling—cutting props and hauling them over to 6 and 7, I think.

Q. How far is No. 6 from the No. 4 shaft, where this trouble occurred?

A. Well, it is about three and one-half or four miles.

Q. Three and one-half or four miles? A. Yes, sir.

Q. You were not at work that day?

A. No, sir, I didn't work that day.

Q. Did you see the shooting?

A. No, I was in the house when the shooting was done. The man had the revolver in his hand when I walked around the house.

Q. Did you see a man with a revolver in his hand?

A. Yes, sir.

Redirect Examination.

Q. Did you see any men on the ground?

A. Yes, that Sylesberry boy and another man, a one-armed man.

Q. Were they dead?

A. I am satisfied the one-armed man was dead, but Sylesberry was kind of wallering around and groaning."

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Mr. Lucas: We offer the testimony of MRS. RHELDA PERRY, page 1476.

(Reading).—

"Q. What is your full name? A. Rhelda Perry.
1276 Q. What was your name before you were married?

A. Rhelda Thomas.

Q. Are you the daughter of Mr. Thomas, who has just testified here, Ewings Thomas? A. Yes, sir.

Q. Where were you living in the spring of 1914?

A. Briceville.

Q. You married at that time? A. Yes, sir.

Q. How many children you have then? A. Three.

Q. Who was your husband? A. Tom Perry.
Q. Who else lived with you there in Briceville?
A. Not anybody just us.
Q. Where did your mother live?
A. On the other side of us.
Q. Near you? A. Yes.
Q. Who was living in that family?
A. My father, mother, brothers and sisters.
Q. When was the first you heard about going to Arkansas?
A. First I heard about it when—I forgot the man's name that come out there, come and told about it and my father fixed up and went on out there and when we went out there he come back and we all fixed up and went back with him.

Q. You know what time of the year that was you went
1277 back? A. No, sir.

Q. Remember what month it was?
A. No, sir, I don't.
Q. Was it summer time or winter time?
A. Summertime.
Q. When you got there where did you go to live?
A. Up on the hill above Goo Goo mines, about the fan house, little piece from the fan house.
Q. What house you live in, by yourself or with other people? A. In the house with my father.
Q. Who was there?
A. My father and mother and brother and three children and his little girl, and Mr. Martin.
Q. How long were you there before this trouble happened?
A. One week.
Q. You know what day of the week it was the trouble happened? A. On Thursday I think it was.
Q. What was the first you heard about it?
A. First I heard was between three o'clock and four o'clock the shooting commenced.
Q. Where was the shooting?
A. Back in the direction of Frog Town.
Q. What did you hear?
A. I heard three or four shots fired.

Q. You asleep at that time?
1278 A. Yes, woke me up the shots did.

Q. What did you do?
A. Jumped up in the bed, and asked my father—told my father the shooting had commenced.
Q. Was he asleep?
A. No, sir, he was laying down had been up and down all night with his wife.
Q. What was the matter with her?

A. I don't know got down and the doctor said it was hot weather and was scared because she was out there thought there would be more trouble, there was lots of talk of it.

Q. Then what did you do after you spoke to him?

A. I got up and put on my clothes and went in the kitchen and built a fire.

Q. What did your father do?

A. Got up and went out to see where the shooting was at, shooting all around as by that time here and yonder bullets coming from all directions.

Q. What time was that?

A. About four o'clock by that time.

Q. Shooting keep on? A. Yes, sir.

Q. Then what did you do?

A. I got up breakfast and when I got breakfast I went to the camps.

Q. What direction did you go? A. Fan House.

1279 Q. What did you do down there?

A. To see about my husband and see if he was killed.

Q. What was he doing down there?

A. Guarding to keep them out, to keep them from coming in and killing us.

Q. Find him? A. No, sir.

Q. How far did you get?

A. Dirt tip, right behind the boiler room.

Q. Who did you find down there?

A. Didn't find anybody had to turn back the bullets got so hot got back as quick as I could.

Q. What time was that? A. About eight o'clock.

Q. Who was with you? A. Mr. Martin.

Q. Who else? A. My brother.

Q. What is his name? A. William Thomas.

Q. Where did you go from there?

A. First went behind some bushes, squatted behind some bushes got so hot, bounced all around us looked like they was going to try to kill us if they could the way the bullets were coming.

1280 Q. How long did you stay there? A. Five minutes.

Q. Then where did you go? A. On home.

Q. What time did you get home?

A. Didn't notice I was scared so bad never thought to look.

Q. Who did you find there?

A. My mother was on the floor with her face to the floor said she was praying for her life to be saved, didn't want to be killed up there.

Q. Who else was there?

A. My father and three children and my sister.
Q. Then where did you go from there?
A. To a bluff, other side of the house half a mile I guess from our house in a bluff.
Q. What did you do there?
A. Got behind those rocks to try to save ourselves.
Q. See anybody going up there?
A. Few men standing here and there around.
Q. Inside the camp? A. Yes, sir.
Q. See any outside? A. No, sir.
Q. See any men with guns coming from the fan house to your house? A. Yes, sir.
1281 Q. Where were they?
A. Back from the fan house coming in this way.
Q. Inside the camp or outside? A. Inside.
Q. Coming toward you? A. Yes, sir.
Q. How many were there that you saw?
A. Can't tell exactly how many, big bunch of them.
Q. See any that had guns? A. Yes, they all had guns.
Q. What were they doing? A. Shooting.
Q. Which direction? A. Down into the camp.
Q. You know any of them? A. No, sir.
Q. When you got on the bluff how long did you stay there?
A. Went about seven and stayed until about eleven.
Q. See any fire along as you come back with your brother?
A. Tipple burning as we come up, we seed the smoke.
Q. What tipple? A. No. 3 tipple.
Q. Where was that?
A. Back toward Frog Level, I just know the name, just heard them call the name of the place.
Q. When you were up on the bluff did you hear any shooting?
1282 A. Yes, plenty fired so fast couldn't count the bullets.
Q. Hear any other sound at that time? A. Yes, sir.
Q. What was that? A. Dynamite, blowed the mines up.
Q. What time was that? A. Don't know just exactly.
Q. About? A. About nine o'clock I believe.
Q. What kind of a sound was that?
A. Like the whole earth was falling in.
Q. How long you think you stayed up there on that bluff?
A. We stayed from about seven or eight, seven I reckon until eleven.
Q. How did you know it was eleven?
A. Two men came to us and told us what time of day it was.
Q. Where did they come from?
A. Come out toward where we lived.

Q. Did you know these men? A. No, sir.
Q. Seen them before? A. No, sir.
Q. Have guns with them? A. Yes, sir.
Q. Have any marks on them?
A. Yes, white handkerchiefs on their left arm.
1283 Q. When did you first see them?
A. First I seed of them standing with guns throwed down on my father.
Q. What did he do?
A. Throwed up his hands and begged them not to kill him.
Q. What did they say?
A. One kept throwing his gun in his, the first one throw his gun down and lift it up and throw it down and the other said, "don't shoot that man."
Q. What were you doing?
A. Let in to screaming, all we could do.
Q. What did the balance do?
A. My little girl grabbed me and said—"Lord, don't kill me or my mamma."
Q. Then what did they do?
A. Told my father to gather us all up and they would take us to the outside, take us to Hartford I believe is the place they told us.
Q. Where did you go first from the bluff?
A. To a spring or a well.
Q. See anybody going down to the well? A. Yes, plenty.
Q. Who?
A. Crowd laying on the road where that tipple was burning.
Q. What were they doing? A. Shooting.
1284 Q. What were they shooting with?
A. Long armed guns.
Q. Have any marks on them?
A. Yes, all had white handkerchiefs around their left arms.
Q. How many you saw with guns and handkerchiefs?
A. All of them.
Q. How many were there?
A. About 200 of them I guess, I can't say there was over that, I will say 200 of them.
Q. You see any other men walking around?
A. Yes, went through there on mules and asked if they were out of ammunition or needed any more ammunition.
Q. What did they have on the mules, anything at all?
A. Yes, sir.
Q. What did they have on them? A. Sack.
Q. Did you hear what they said?

A. Yes, said I want more ammunition and said to go a little piece further some of them was out of ammunition.
Q. Where did he go?
A. Up the road to some more of them.
Q. Where did the mule go?
A. With him, he stayed on the mule.
Q. Then where did you get to?
A. To the well and got a drink.
Q. What did you see at the well?
A. Great crowd of men.
1285 Q. These two men that come to you at the bluff go with you to the well? A. Yes, got us water.
Q. Who did you meet at the well?
A. I can't tell you who all was there.
Q. How many was there?
A. About two hundred gathered around us after we got there.
Q. Have guns? A. Yes, sir.
Q. Have marks on them? A. Yes, sir.
Q. What marks?
A. White handkerchiefs tied around their left arm.
Q. Did anything happen at the well there?
A. A man that had on his work clothes, had on his bank cap and bank clothes and had his wife there and she had four children and these other fellows said, "just give you so many minutes to get away in," and told him if he didn't get away in that length of time they would kill him.
Q. Where did they tell him to go?
A. Hit that corn field and get away as quick as you can.
Q. What did he do?
A. Hit the corn field, jumped the fence, I don't think he ever touched the fence he was going so fast.
Q. See him any more that day? A. No, sir.
1286 Q. See him any more? A. No, sir.
Q. What become of his wife and children?
A. We left them at Hartford.
Q. Where did they go from the spring? A. Hartford.
Q. How did they go?
A. Went out the road and these fellows that took us put them in a hack and took them to Hartford.
Q. How did you get from the bluff to where you got in the hack? A. Walked.
Q. How were you dressed?
A. Nice dressing, I was well dressed, I looked like a clay bank. I was barefooted.
Q. Where were your shoes?

A. I left them at the house, somebody got them, I don't know who got them.
Q. How long did it take you to get to Hartford?
A. About one when we got there.
Q. Where did you go when you got there?
A. First took us up stairs in a hotel and took us out of the hotel and we went back to an old store house.
Q. See any people on the way to Hartford? A. Yes, lots.
Q. Men or women? A. Yes.
1287 [A.] Men and women? A. Yes, had guns.
Q. Have handkerchiefs on them?
A. Yes, all had handkerchiefs tied around their left arm.
Q. Then when you were at the hotel any people come up there?
A. Yes, women come up, several women come up some treated us nice and some of them treated us pretty bad, one woman there said, "she was sorry—
Q. When this woman was there any of the people there who brought you into Hartford?
A. No, sir, just our own folks.
Q. When you went to the store house, what sort of a place was that?
A. Very nasty looking place, had to keep our handkerchiefs over our noses to get our breath.
Q. Why? A. So nasty.
Q. What was in there?
A. Everything in the world looked like.
Q. What sort of things?
A. Just old cow hides and old cheese that had rotted, been an old store in there, old potatoes and old cabbage rotten.
Q. How long were you there?
A. There from Saturday until Sunday morning.
Q. You go anywhere Friday night?
A. Yes, Friday evening about four o'clock I went back
1288 after my things.
Q. Who went with you?
A. Three officers, they said they were officers.
Q. You walk? A. No, sir, went in a wagon.
Q. How many wagons? A. Two.
Q. You meet any people on the road? A. Yes, sir.
Q. Who did you meet? A. I don't know who they was.
Q. Have any marks on them.
A. No, sir, didn't have any marks on them.
Q. Any people stop you on the road? A. Yes, sir.
Q. They have guns?
A. If they did they had them concealed, I didn't see them.
Q. How many times you stop on the road?

A. About one dozen times.

Q. These officers with you at that time, said they were officers? A. Yes, sir.

Q. Why did you stop?

A. Asked questions, would ask how I come out there and I told them I just come and they said then, "didn't you know there was trouble here," and I said, "No, sir, didn't know there was no trouble" and they said, "well you know it now, don't you," and I said, "yes, I know it now." They
1289 said they wanted us when we got back home to turn to be unions, I told them I didn't think it was a woman's place to be a union, that the men would have to decide that I didn't have anything to do with it.

Q. When you got to Prairie Creek what did you find?

A. We found everything all right when we went there, everything was very [peaveable,] I didn't see any trouble there.

Q. Did you notice any of the houses?

A. Yes, saw houses there.

Q. Did you notice the mines as you went by? A. Yes, sir.

Q. Notice anything special about them?

A. No, sir, just looked like any other mines.

Q. See No. 3 tipple when you went back?

A. Pretty good building, I thought.

Q. Was that the same tipple you went by as you come out?

A. Yes, sir.

Q. Go back the same way you come out?

A. Yes, come in there after dark, couldn't see very much after dark.

Q. Went in after dark? A. Yes, sir.

Q. What time was that?

A. Little after seven o'clock I suppose.

Q. In the evening? A. Yes, sir.

1290 Q. You see any fires around when you went in?

A. No, sir.

Q. What did you do when you got there to your house?

A. Went there and made down pallets and went to bed.

Q. I mean when you went back to get your things. What did you do when you went back to Prairie Creek when you went back for your things?

A. Went in and got our things, what was left of them.

Q. What did you find there?

A. Couldn't find anything much, only what was the company's, our trunks had been searched and everything taken out of them that was valuable.

Q. In answer to my question when you said when you got there everything was all right were you talking about going into Prairie Creek first or second time?

A. I thought you was talking about how did we sleep after we got to Prairie Creek?

Q. You were talking about the time when you first got there? A. Yes, sir.

Q. I was talking about when you went back to Prairie Creek after your things? A. Yes, sir.

Q. When you went back to Prairie Creek was it all right then?

A. No, sir, our things were destroyed.

Q. See the mines?

1291 A. No, sir, no mines there, everything burned up.

Q. Were there any houses in the camp there when you went back? A. Yes, some few.

Q. Any burned up? A. One or two burned up.

Q. What did you do with your things when you found them there at Prairie Creek?

A. We put them in the trunks best we could and put them in the wagon and brought them to Hartford.

Q. What did you do with them in Hartford?

A. Piled them in the store house, brought none except outs. I don't know what became of the company's things, they said they were going to pay the expense out of the things they took down there.

Q. Who said that?

A. I don't know, some of the men down there.

Q. What men? A. Union fellows.

Q. Where did you go when you left the store house?

A. Went to the depot.

Q. When? A. Sunday morning.

Q. On Saturday you stayed there all day? A. Yes, sir.

Q. Your brother go away anywhere?

1292 A. I don't recollect if he did.

Q. Then on Sunday morning what time did you start?

A. About six o'clock.

Q. Have your breakfast? A. No, sir.

Q. What train did you go on, if you know? A. No, sir.

Q. Went back to Coal Creek then? A. Yes, sir.

Q. You know who paid your fare?

A. Mayor of the town.

Q. How do you know it was the Mayor of the town?

A. Man that guarded us said he was.

Q. How many guards did you have?

A. Two guards in the store house.

Q. Have any guns? A. Yes, sir.

Q. What were they guarding against, if you know?
A. Afraid they would come in and kill us they said.
Q. Who did they say would come in and kill you?
A. Boys were all drunk and they were liable to come and kill us if they didn't have a guard.
Q. Did you know Charles Suttles? A. Yes, sir.
Q. You see him before you went down to find your husband? A. No, sir.
1293 Q. Get your shoes when you went back?
A. No, sir, I come barefooted from out there home to Coal Creek."

Mr. Warrum: We waive the cross-examination.

(Whereupon, 12:30, after the usual admonition by the court to the jury, a recess was taken until two P. M.)

---

1294 After Recess

At 2:00 o'clock P. M. court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record.

Mr. Drinker: We were going to read some more of the examination from the deposition, but if your Honor please, I would like to put Mr. Langford on, as he wants to make a train.

The Court: Very well.

COOPER H. LANGFORD, of lawful age, being called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:
Q. Give your name to the reporter please?
A. Cooper H. Langford.
Q. Where do you live now? A. Clarksville.
Q. How long have you lived there?
A. About thirty years.
Q. What business are you in? A. Mercantile business.
Q. Where did you live in 1914? A. Clarksville.
Q. Were you employed as superintendent at the Bache-Denman No. 4 Prairie Creek Mine in the spring of 1914?
A. I was.
Q. When did you go there?
1295 A. I worked there about two months, a little over two months before the trouble on the 17th.
Q. And when did you leave?

A. The night before the battle.
Q. Why did you leave there?
A. We had a Board meeting, directors meeting of the Scranton Anthracite Coal Company, a meeting at Clarksville and Mr. Bailey called me to attend that.
Q. You left on the night of the 16th? A. Yes, sir.
Q. When you first went down there, in what capacity were you employed?
A. As assistant superintendent at first; Mr. Cameron was the superintendent at that time.
Q. And then you were promoted to superintendent?
A. Yes, sir.
Q. When he left? A. A few days after I got there.
Q. How many men did you have under you there?
A. I had from fifty to a hundred men.
Q. Did you employ the men? A. Yes, sir.
Q. Did you have any difficulty in getting men to come to work there? A. No, sir, I did not.
Q. Did you have any difficulty when there was no federal injunction? Were you there before the injunction was
1296 granted?
A. Yes, sir, I was there for a while before, I reckon we were there quite a while before the Marshals were sent down.
Q. Were you down there before the 8th of May?
A. Yes,—no,—the 17th of July is when the trouble was. It was about two months and seven or eight days before that that I went down there.
Q. You were not there before the eighth of May?
A. No, sir.
Q. You say you had no trouble to get men to work for you? A. No, sir, no trouble at all.
Q. Did you have as many men down there as you could use? A. We had more than we could use.
Q. Why did you employ more?
A. We expected to get the water out and we could have used them after that.
Q. You had more than you could use pumping, but not more than you could use mining? A. No, sir.
Q. How many of these men you employed were coal diggers? A. Practically all of them.
Q. What do you mean by practically?
A. All but possibly two or three, I don't know of any that were not coal diggers.
Q. You don't know not a one that was not a coal digger?

A. I don't know one that I can say was not a coal digger. We had one man from Ft. Smith that I didn't know [wheth] he was a coal digger or not, he was used as a guard.

1297 Q. What business had he been in before?

A. He had been in the army, he told me, in the regular army before.

Q. How long since? A. Just a short time.

Q. And besides him was there anybody that you know that was not a coal digger?

A. They all worked in and around the mines.

Q. They all had worked in and around the mines before?

A. Yes, sir.

Q. Now, did you have any men, when you were there, that were professional detectives? A. No, sir, I did not.

Q. Or professional guards? A. I did not.

Q. Did you put any men to work guarding? A. Yes, sir.

Q. How many?

A. Usually we had about eight or ten men, four on the day shift, and about 6 on the night.

Q. Did they do any work besides guarding?

A. Well, not regular, no. They had the job of guarding, that is what they were paid for.

Q. Were they men who, if they had not been guarding, could have worked as miners?

A. They were diggers, miners, just [as] the same as the rest.

Q. So you took from your force, eight or ten men

1298 and put them to work guarding? A. We did.

Q. Now, you say you hired men, where did you get them?

A. A few of them around Midland down there, and most of them out of Johnson County.

Q. Did you have any difficulty in getting them to the mine?

A. We had some trouble in getting them from Ft. Smith to the mine, frequently.

Q. Did you have any trouble the first day you went down there? A. Yes, sir.

Q. Describe that, please?

A. We had a considerable row on the train.

Q. Who did you have with you?

A. I had Hack Pitton, and I don't believe I can name the other men of the seven.

Q. How many were there, you say seven?

A. Six or seven.

Q. Where did they come from?

A. From Johnson County.

Q. Where you had been before? A. Yes, sir.

Q. In Spadra? A. Yes, sir, around Spadra.
Q. You got them to come up from down there?
A. Yes, sir.
Q. They were coal diggers? A. Yes, sir.
Q. And what was the trouble that you spoke of, de-
1299 scribe it?
A. There were some men in the car that started a row.
Q. Did you know any of them?
A. I knew Stansfield, he was from the Spadra field, and he and Tipton got in a row.
Q. Just describe it briefly without going into detail?
A. They began talking and he began to abuse him about going down to work at a scab mine.
Q. Did they get off the train? A. No, sir, not then.
Q. Where did they get off?
A. They got at No. 4, Prairie Creek.
Q. How far is that from the mine?
A. Something like a half a mile.
Q. Was Mr. Johnson on that train with you?
A. Yes, sir.
Q. What was he? A. Deputy marshal.
Q. Deputy United States marshal under Marshal Mayes?
A. Yes, sir.
Q. Now when you got off of the train, Mr. Langford, did Tipton say anything or use any language to any girls or women on the road there? A. He did not.
Q. What happened?
A. There was just a general mob at the depot and they were hollering, calling us scabs, and there was a bunch of women in the road, and one girl pointed over at the mine, and says, "There is the scab pit," or something, "Over
1300 there, go over that way," and Tipton says, just "Ya, ya-ya" or something like that, and I told him to hush.
Q. That was all there was to it? A. Yes, sir.
Q. Do you know who the girl was? A. I do not.
Q. Did you afterwards find out who she was?
A. I heard she was one of the Johnson girls.
Q. Charlie Johnson's sister? A. Yes, sir.
Q. Was Riley Bailey there? A. No, sir.
Q. Did he say anything to the girl? A. No, sir.
Q. How near was he at that time?
A. He could not have been nearer than a quarter of a mile, I could see down the valley, and we met him further up.
Q. Did anybody throw a rock at your party?
A. Yes, sir, when we first got off of the train somebody threw a rock; it passed right by my head.

Q. Did you have any trouble at Prairie Creek crossing on the 15th of June, or thereabouts?

A. We had trouble in unloading some men there.

Q. Just describe that very briefly?

A. There was quite a bunch of union miners on the train and we had three or four men on there, and they refused to let them get off the train. Finally one man did get off,

1301 and when he went to get off they hit him in the back of the head as he was getting off and knocked him off. I went in the train, and got, two more men off; I know of one, and I asked him when I found him, if he was not going to get off, and he said, "No, I am afraid to get off," and I said, "Come on, I will take you off," and we got off the train.

Q. Who were they,—were the Parrish boys there?

A. One of them was the one that got hit in the back of the head.

Q. Do you know who threw the rock?

A. No, sir, it was not a rock, he hit him with his fist; this was a different time, the rock business.

Q. Do you know who it was?

A. I think it was Sandy Robinson.

Q. He was a union miner? A. Yes, sir.

Q. Was there a constable there at the time? A. Yes, sir.

Q. What was his name?

A. I believe, Fitzgerald, or Fitzpatrick; I knew him at that time.

Q. Did he do anything to Sandy?

A. No, sir, I tried to get him to help get those men off, but he wouldn't have anything to do with it, he stood back.

Q. Did you see Clint Burris there? A. Yes, sir.

Q. And Jim Slankard?

A. I don't know that I saw him; he frequently rode on the train; I saw him a number of times on the train.

1302 Q. You saw him frequently ride the train?

A. Yes, sir.

Q. Did the union men say anything to your boys?

A. Just a general row and wrangle and cussing match.

Q. Was Mr. Shell there with you? A. I don't remember.

Q. What was Leo Shell?

A. Deputy United States Marshal.

Q. He was down there about that time? A. Yes, sir.

Q. How long was he there,—never mind, he will be on next. Do you remember about your blacksmith having any trouble, an old man?

A. Yes, sir, there was an old man, the mine blacksmith that got beat up one night.

Q. Do you know who beat him up? A. No, sir, I do not.

Q. Was it outside your camp?

A. Yes, sir, he started to come to Ft. Smith for something, and he got beat up. They brought him back, and had to send for a doctor for him.

Q. How old was he?

A. A man of sixty or sixty-five years old.

Q. Was there a man named Birkell brought into your camp?

A. Yes, sir, [the] was a man brought in, I believe that is the name he gave.

Q. Tell the court and jury the facts that immediately
1303 preceded and followed that Birkell incident?

A. Every night or two [thre] was shooting into the camp, and usually before they started that they cut the telephone wires. We got our power, electric power, to keep the lights and machinery running from Huntington, and they got to cutting that electric wire. That was on a post there, as our wire came off of the main line about half a mile or near that, from out on the main road. They usually would shoot off big charges of dynamite around, and cut the telephone wires so we couldn't get outside connection, and cut this wire, and it would put us in the dark, and then they started shooting into the camp. That was the usual procedure every night, and this man Shell had been guarding this post to keep them from cutting the wire where it came off the main line, and that would cut off our plant but not anybody else. That night he did not go out, and he got Harry Dunlap and Charley Cheek to go out in his place, and they were guarding this post, lying in a ditch out there, and after this telephone wire was cut they began to shooting. I heard a shot that I knew was one of our guards, Mr. Hamilton, near the gate. I ran up and told him not to shoot out that way, there was a couple of our men out there, and he said I am not shooting where they are, I am shooting at that pile of cross ties, that was about 75 yards away. He said, "There is a man behind that shooting into the camp and I am shooting at the flash of his gun. In a few minutes after that Dunlap and Cheek came up the road with this tall fellow who they said was Birkell afterwards and brought him into the camp. At that time there was an old man, Chitwood, an old man that was United States Marshal and I turned him over to him.

1304 Q. What did you say?

A. I ran to the gate and said "You got one of the sons-of-bitches, did you, boys" and he said, "Don't talk that way," and I said, "Don't be uneasy, there is not a man in here that would hurt a hair on your head, they are not that kind," and I turned him over to the United States marshal.

Q. Then what happened to him then?

A. Mr. Chitwood guarded him until 12 or 1 o'clock at night, at least he told me he did, talked to him. I went to bed.

Q. What happened the next day?

A. The next day Holt told him he was wanted at the Court here.

Q. That who was wanted?

A. This Birkell, at the Federal Court, and Moore and I were coming into court and we told him he could ride in with us. He came in with us and we let him out here at the court House.

Q. During the entire time that you were there, Mr. Langford, state whether or not any of the employees or men under you, or any employee of the company went out and shot up Frogtown, Frogtown or any other union camp?

A. They did not.

Q. Would you have known it if they had?

A. I certainly would, I had guards around there, and there was no way to get out without me knowing it.

Q. Did any of them ever get out?

A. Once in a while a man would get out, slip by the guards. There were two or three times they went out and
1305 bought whiskey from bootleggers. I discharged one or two men for being drunk. I caught them with whiskey inside the camp.

Q. Now, Mr. Langford, did you [now] about the change in the marshalship on the 15th of July, when Mr. Mayes went out and Mr. Parker came in?

A. I know there was a change about that time.

Q. What happened?

A. Mr. Holt and Mr. Chitwood, came in and left the camp.

Q. When Mr. Mayes went out? That ended their commission? A. Yes, sir, they came in.

Q. And Shell too?

A. I don't think he came to Ft. Smith, if he did he came right back, he was down there.

Q. He was down there at the time?

A. Yes, sir, on the 17th.

Q. There were three of them there on the 15th?

A. Yes, sir.

Q. Holt and Chitwood and Shell? A. Yes, sir.

Q. And they were Mayes' deputies? A. Yes, sir.

Q. And when Mr. Mayes resigned that ended their commission? A. Yes, sir, I understand it that way.

Q. And Holt and Chitwood came to Ft. Smith and did not come back? A. Yes, sir.

Q. And they were not there when you left on the 16th?
A. No, sir.

1306 Q. Was Shell a deputy marshal on the 16th?
A. I don't know, I don't think so.

Mr. Drinker: That is all.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused).

Mr. Lucas: We will refer back to the deposition of Mrs. Rhelda Perry, and the plaintiffs would like to have considered read in the record all of the cross-examination by Mr. Covington, then counsel for the defendants.

Q. You got up between three and four o'clock on the morning of the trouble, on the 17th of July, you say?
A. Yes, sir.
Q. And dressed? A. Yes, sir.
Q. And put on your shoes?
A. Didn't have any to put on. I had shots it was so hot didn't put my shoes on.
Q. Went down to the mines without any shoes on?
A. Yes, sir.
Q. You had shoes?
A. Had slippers, bought them at Coal Creek gave $3.75 for them when I started from Coal Creek.
Q. Went on the mountain without any shoes on?
A. Yes, sir.
Q. Did you wear the same clothes that you wore around the mines there before that time? A. Yes, sir.

1307 Q. Why is it you leave the impression in your testimony that something happened to make your clothes look like clay?
A. The wind was blowing the clay dirt all over us and we was wet with sweat, I had two children, packing my children and sweating and the dust flying against us and made us dirty. Our clothes were not dirty when we left the house it was the dust on the road, the wind blowing the dust against us.
Q. When you started to Hartford—didn't you get into that on the mountain? A. No, sir.
Q. Was not any of that out there? A. No, sir.
Q. When you went down to the mines you didn't see your husband? A. No, sir.
Q. Who was with you? A. Mr. Martin and my brother.

Q. Where was your father? A. At the fan house.
Q. There you went down? A. Yes, sir.
Q. What time of the day was that?
A. About seven o'clock.
Q. You say they were just shooting everywhere?
A. Yes, sir.
Q. Bullets flying thick? A. Yes, sir.
1308 Q. There in the camp there? A. Yes, sir.
Q. Anybody get killed?
A. If they did I don't know it, said one was killed.
Q. Any killed there that you know of?
A. No, sir, not that I know of.
Q. About how many men and women and children in the camp the bullets were flying through? A. I don't know.
Q. Four hundred? A. Don't know.
Q. Two hundred? A. I don't know.
Q. Three hundred?
A. About that many, not acquainted with all of them.
Q. About three hundred you think? A. I think so.
Q. Where these bullets knocked up the [duest] all around there? A. I didn't say that.
Q. I understood you to say knocked the dust all around?
A. Down at the boiler house the bullets bounced all around us and we got in behind the bushes, there is a little branch there, no dust there, the bullets were flying.
Q. See the men shooting?
A. No, sir, couldn't see that.
Q. Where were they shooting from?
A. At the side of the railroad and the ridge, some along there.
1309 Q. That the only ones doing any shooting?
A. No, sir, and on the bluff.
Q. And some fire around the mines? A. Yes, sir.
Q. How long did you remain down there in that particular zone?
A. Just as quick as I got a chance I got back to the house.
Q. Got a chance, I ask what you mean by that?
A. Bullets flying so fast I was afraid I would get killed and my little children were there at the house, mother was sick and my husband not there and their lives were so sweet to them as mine was to me.
Q. That was about seven o'clock in the morning?
A. Yes, sir.
Q. You then went back to the house and your father and the rest of the family went out on the mountain?
A. Yes, sir.

Q. And you saw some men with guns drawn on your father? A. Yes, sir.
Q. Had long, what kind of guns?
A. Long range guns.
Q. You know a gun of that particular make when you see it? A. I know one if I see it.
Q. Where did you see one of these guns?
A. Seed them fellows have them.
Q. First you ever saw? A. Yes, first I ever saw.
Q. State the peculiarity of the gun that attracted your
1310 attention to this high powered gun?
A. Why the bullets about that long they have to shoot, that went in that gun. (Holding right fore finger on her left hand about [on] inch above the bottom joint of the fore finger."
Q. You know what Mr. Drinker means by above the bottom joint of the fore finger?
A. Just means the cartridge—above the bottom just of the finger, there is a jint and there is a jint. (Showing on her finger).
Q. Yes, but I want to know about the bottom joint of the fore finger? A. Jint in my hand, I mean.
Q. That the peculiar thing about the long range guns that attracted your attention, had a cartridge about five inches long? A. I didn't say nary inch, I said that long.
Q. You know what an inch is? A. Yes, sir.
Q. How many inches long was the cartridge?
A. You know as much as I do, about that long. (Measuring on her finger.)
Q. That be about five inches long? A. I guess so.
Q. You are willing to do the testifying in this case without the assistance of Mr. Drinker?
A. If he sees I am doing anything wrong to tell me.
Q. Perfectly willing to have him assist you?
A. I think he needs to do that, I never was sworn any
1311 before, my oath was never took before, I might say something might hurt your feelings some way, I ain't going to tell no tales, here to tell the truth on both sides.
Q. Now then from the cartridge that you described on your fore finger from the bottom knuckle up, you say it was a long range gun? A. Yes, sir.
Q. Where did you see the cartridges?
A. Saw them loading their guns up.
Q. Stand there and load before he drew his gun on your father? A. No, sir, not them.
Q. Afterwards?

A. Shot them out after they got from us, they went in front of us, and turned around and loaded them.

Q. What were they shooting at?

A. I don't know that.

Q. What direction were they shooting?

A. Toward the camp from where we were at.

Q. That the employees of the mine there? A. Yes, sir.

Q. You had seen them before?

A. No, sir, the first ones I ever saw that way.

Q. Now proceed from the mountain down, how far was it from where you were first stationed to the spring or well you refer to?

A. I guess about a mile and half from where we was at. May have been a little further.

1312 Q. When you reached the well you were back two and a half miles from that mine were you not?

A. Yes, sir.

Q. You saw the men around that well and on the ridge shooting toward the mines? A. No, sir, didn't say that.

Q. Where? A. From the ridge toward the tipple house.

Q. Go by the tipple house?

A. Where there was a fire down there went around the tipple, couldn't go by the tipple it was afire and blowing toward us, we had to go in the woods.

Q. How far east of the tipple did you go?

A. I don't know about 200 or 100 yards, I guess from up there.

Q. How near you get to the road leading from Huntington to Hartford?

A. Went around that and come back in the road.

Q. You get into the road leading from Huntington to Hartford?

A. Left that road and went through a little path there to the well and little house, a house down there.

Q. Any automobiles standing around there? A. No, sir.

Q. Buggies and wagons? A. Yes, wagons.

Q. Women and children scattered all over that section of country? A. Yes, sir.

1313 Q. Have guns, all the women and men? A. No, sir.

Q. Have white handkerchiefs on their arms?

A. Women did.

Q. Men have them too?

A. Yes, some of the women had white handkerchiefs and some white waists.

Q. Them that didn't have on white waists have white handkerchiefs on their arms? A. Yes, sir.

Q. Which arm? A. Left.

Q. Men have them on the left arm? A. Yes, sir.
Q. Men at the well with the miners clothes on, I believe you said some fellow of that kind, dressed in that way, had a wife and four children— A. Yes, sir.
Q. They were there with him? A. Yes, sir.
Q. And told him they would give him a chance for his life?
A. Yes, sir.
Q. Then some of the parties present pointed to a high tree some distance beyond and said go there, pointing to that tree, we will give you a chance for your life?
A. No, sir, told him to go to the tree.

Q. Have you and your father discussed this matter
1314 frequently since you returned here?

A. No, sir, just what I am telling you is the truth, I ain't telling no story anything about this.
Q. Just answer my question? A. I am telling you.
Q. Who got you to come here to testify?
A. This fellow here.
Q. The lawyer? A. Yes, sir.
Q. Were you to be down at Coal Creek yesterday?
A. I don't know whether was to be there yesterday or not, we were not.
Q. You know whether you were to be there?
A. We was aiming to go but we come over here and he would call us.
Q. The private detective of the plaintiffs first talked to you, standing in the door?
A. We come to Coal Creek and we got off at Coal Creek and this fellow was there and we told him we were coming on over here, and he said, "the lawyers on both sides want to see you."
Q. Did he tell you the lawyers on both sides wanted to see you?
A. Yes, the lawyers on both sides wanted to see us.
Q. And then tell you what they wanted with you?
A. I don't think so, never, I thought he told us enough, was not his duty to tell us was it? I didn't think it was.

Q. What were you doing at Coal Creek, how did you
1315 come to meet with this detective at Coal Creek?

A. He wrote us to be here, not wrote but telephone to us.
Q. Where did you live?
A. Middlesboro, Fork Ridge, lived at the mines at Fork Ridge.
Q. And he told you the lawyers on both sides wanted you to come down here? A. Yes, sir.
Q. What did he say they wanted you for?

A. No, sir, didn't particular tell us what for, we knowed what for.

Q. Who paid your way down here? A. He did.

Q. Paying your expenses while here? A. Yes, sir.

Q. This same man standing in the door? A. Yes, sir.

Q. You know his name? A. No, sir.

Q. Tell you his name?

A. Maybe, but I don't remember it.

Q. Would you remember it if you heard it? A. Yes, sir.

Q. Named Curtis? A. Yes, sir.

Q. That the man there in the door? A. Yes, sir.

Q. Did you agree to come back to Coal Creek yesterday?

1316 A. Yes, if they needed me I was willing.

Q. Did you agree to go back, were you to go?

A. If they wanted me to go back.

Q. And they didn't ask you to come back?

A. No, sir, come here and stay until they called up, if they needed us they could call us, I had a brother and sister here and was coming to see them, I supposed if they had not wanted us they would not have kept us down here.

Q. When did you see them again?

A. Didn't see them any more until yesterday evening, come back with this here man.

Q. Came to see you?

A. No, sir, I never spoke to him yesterday, until this morning.

Q. You talk to Mr. Drinker yesterday evening?

A. Yes, sir.

Q. When did your husband—he came back from Prairie Creek, Arkansas? A. Yes, sir.

Q. Where is he now?

A. I don't know where he is right now.

Q. How long since you heard from him?

A. A few minutes, an hour or so since I saw him.

Q. Is he here? A. Yes, sir.

Q. To testify?

A No, sir, not capable of testifying hard of hearing and can't understand enough and not capable of testifying, can't hear good, just as liable to say one thing as another.

1317 Q. They paying you for your time here?

A. Yes, sir.

Q. What are they paying you?

A. I don't know exactly.

Q. What did they agree to pay you?

A. Said they would pay us our fare out here and expenses.

Q. Anything else? A. No, sir.

Q. Just railroad fare and hotel bill? A. Yes, sir.
Q. You were told by Detective Curtiss that the lawyers on both sides wanted you?
A. Yes, sir. They told us they didn't want us to tell anything but the truth, we told them just what we tell you all, we didn't tell any fairy tales.
Q. Did you tell Curtiss, or anyone else what you would testify if they carried you to Coal Creek yesterday?
A. Don't understand that.
Q. Did you tell them before you came over here what you would testify to if you went to Coal Creek?
A. Didn't tell them anything but that.
Q. The first intimation you gave of what you would testify was on yesterday? A. Yes, sir.
Q. They didn't know what you would testify to until they come here yesterday evening.
1318 A. I never saw them until yesterday evening
Q. Mrs. Perry you didn't know the names of any of the employees or anybody else you saw that day?
A. No, sir.
Q. Don't know who they were or where they came from?
A. I know some come from that town they took us they come in droves, passed us all along going in.
Q. You don't know their names, the men or women or any of them? A. No, sir, didn't know them.
Q. Don't know any of the employees of the company except those you have named? A. No, sir.
Q. After you got to Hartford they still have on white handkerchiefs? A. No, sir.
Q. How far out of Hartford did that mark of distinction continue?
A. At the well was the first starter, after we left there didn't see any more of the white handkerchiefs. Some few along the road.
Q. Guards have on white handkerchiefs? A. No, sir.
Q. Who was this man that hauled you down to Hartford?
A. Preacher, said he was a preacher and I don't know who the other man was.
Q. What was his name? A. Don't know.
Q. Stroke?
1319 A. Seems like that name, appears like it sounded like that.
Q. Tall, light complected man? A. Yes, sir.
Q. Have a gun in the wagon?
A. Yes, in his hands or under his arm.
Q. Who was driving? A. He was."

Mr. Lucas: We waive the redirect examination unless the defendants wish it read.

Mr. Warrum: We don't care for it, put it in or leave it out, it is immaterial.

Mr. Lucas: The plaintiffs will offer it if the defendants do not, also the re-cross.

"Q. Now, Mr. Covington asked you about the employees, you know what he meant by employees?
A. No, sir, don't know.
Q. Didn't know what he meant by that word?
A. No. sir."

'Recross-Examination

Q. You don't know what an employee is? A. No, sir.
Q. You know what means to work for people around a place? A. Yes, sir.
Q. They had a great many guns among those fellows around the mines?
A. I can't tell that, can't tell how many guns.
1320 Q. See any while you were there?
A. Yes, the guards had guns, I mean I didn't see them shoot any with the guns.
Q. What kind of guns did the guards have?
A. Can't tell what kind they had, don't know.
Q. You didn't see them load them?
A. No, sir, didn't see any of the cartridges, if I had I would tell you.
Q. You ever heard one of those long range guns until you went to Arkansas?
A. No, sir, until they said they was long range guns.
Q. Who did?
A. Those fellows that captured us and took us out.
Q. Don't know who they were? A. No, sir.
Q. What is the meaning of the word union?
A. They just said they were unions, they told me they were unions.
Q. That's all they said? A. Yes, sir.
Q. That all they said?
A. Yes, said they was unions, said that town was a union town.
Q. That over at the town or on the mountain?
A. Over at town.
Q. These men on the mountain didn't say anything?
A. No, sir, didn't particular tell us they was unions they had guns—

Q. About how many guns you see at the spring?
1321 A. Every man that was down there had them about three of them or more.
Q. How many you see 1500 or 200 there?
A. I guess, in every direction and everywhere you would see a gang of men.
Q. Everybody had guns and was shooting?
A. No, sir, not everybody, biggest portion of them, [then] that was not was wanting too.
Q. Did the men around the tip have the same opportunity to know where the shooting was coming from that you had?
A. Yes, they was down there.
Q. Then if they say the shooting was at the side of the hill alone, if those working at the mines and tip say the shooting was coming from there across the railroad and that place alone they are mistaken are they?
A. That was the first starting of the shooting.
Q. If they say that they were only firing from this hill [siad] is that correct? A. I don't see into that.
Q. If the men down there on the 17th of July, if they say that the shots that were fired into the mines were fired from the hillside across the railroad and no other shooting from that particular point, is that correct?
A. They are mistaken, because it was all around, surrounded the men that were in there."

1322 LEO SCHELL, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

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Direct Examination

By Mr. Lucas:
Q. What is your name? A. Leo Schell.
Q. What were you doing in the spring of 1914, Mr. Schell? Where were you living in 1914?
A. I lived at Mena, Arkansas.
Q. Did you have occasion to come to Fort Smith?
A. Yes, sir, I was in Fort Smith along about that time.
Q. What caused you to come here?
A. I came here to be commissioned by the United States Government.
Q. Will you talk up loud, so the last juror can hear everything you say? A. Yes, sir.
Q. For what purpose did you accept that commission?
A. We really didn't know what the terms was until we came to Fort Smith. We came here for a commission from United States Marshal Mayes to go to Prairie Creek. They said the United States had filed an injunction against some

mine property down there, and we was to go down there and not allow the property to be molested by anyone.

Q. You were going down there to guard the property?

A. We wasn't supposed to do guarding, no, sir. We went down there to see that it was not molested.

Q. Were you accompanied by any other men from
1323 your home town at that time? A. Yes, sir.

Q. About how many?

A. To the best of my memory now, there was about 15 of us came from Mena together.

Q. About how many altogether were sent down to the mine as United States Marshals?

A. There were supposed to have been about 60, but I think 30 was about what went.

Q. They were all commissioned as special deputies, were they? A. Yes, sir.

Q. And paid, of course, by the government?

A. By the United States Government, yes, sir.

Q. Would you state what your duties were at the mine?

A. I told you before that we went down there as Deputy United States Marshals to see that the property was not molested. There was an injunction against it, and we were sent there to see there was no damage done to the property.

Q. Were the marshals withdrawn at a certain time?

A. Well, after a few days, probably 10 days, something like that, afterward, why, they were all taken away, except three.

Q. Who were those three?

A. Chitwood, Holt and myself.

Q. Soon after that withdrawal did any trouble develop, that you know of?

A. Well, one evening shortly after that there was a few men come in there from somewhere, and one of them
1324 was a young fellow by the name of Parish, from the train. They had a little disturbance over at the crossing, and they refused to let them off. That is what they told me. They asked me to go over and help the men get off, and I did. Frank Barnes was there, and Sandy Robinson, and a number of other I disremember their names. But they objected to letting them off for a while, but finally give way and let the men get off, or let one of them off that I remember.

Q. What caused them to give way and let these men off?

A. Well, I explained to them the cause for me being there, and asked them if they wouldn't get back and give the men room. They resisted, and finally I pulled my gun and I said, "Now, men, I will tell you, it is time to get back. You

will have to let them off." Sandy Robinson made some kind of a remark, and Clint Burris backed him up. I didn't know what he said, though. Finally they said, "All right. Unload, scabs."

Q. Did you see any of these men that wanted to get off there by the crossing struck or hurt?

A. Yes, sir, Joe Parish was hit. I don't know who hit him.

Q. The day after this occurrence did you see Clint Burris again? A. Yes, sir, I saw him often.

Q. Do you recall his saying anything to you about that incident that you have just spoken of? A. Yes, sir.

Q. What did he say?

A. He asked me if I could swear that he was there, and I told him I could. He asked me if I would swear to it,
1325 and I told him I would.

Q. Do you remember meeting a man named Bob Graham and some other men along later on?

A. I don't recall that.

Q. Do you recall seeing a sign there with anything printed on it?

A. Yes, sir, they had a sign up there stretched over the road, a banner, they called it. It said, "Remember Ludlow."

Q. Do you recall when you saw that sign that Bob Graham was there and Clint Burris?

A. Clint Burris was there. I disremember Graham.

Q. You are not sure of Graham? A. No, sir.

Q. Well, then, don't speak of that. What else was said at that time?

A. Well, they said Prairie Creek would be the same.

Q. Who said that, Mr. Schell? A. Clint Burris.

Q. Did they say anything about what ought to be done with the rifles that were in the camp?

A. Yes, sir. They said we had better take those guns and shove them up our ass and get out of there or they would come down and do it for us.

Q. Referring again to this sign or banner, with the words written on it, "Remember Ludlow", did anybody point to that?

A. There were several men on the platform. Someone did, but I don't know who it was.

Q. At the time that conversation took place and these
1326 statements were made? Is that correct?

A. Yes, sir.

Q. Did this Clint Burris point at it?

A. Well, I wouldn't say.

Q. Do you remember one night when you were there in the camp, you and Mr. Holt and [Mt.] Chitwood, that they brought in a man named Berkell?

A. I remember them bringing in a man. I don't know what his name was.

Q. You heard Mr. Langford just testify as to that, did you? A. I heard him, yes, sir.

Q. What can you state as to your connection with that matter?

A. Well, sometime along about 9 o'clock in the evening Charley Cheek and some other guards brought some man down to our tent, and they wanted to turn him over to the United States Marshals, and we wouldn't accept him. We had no authority to accept any prisoners from outsiders. So the man was detained there overnight. I don't know what became of him the next morning, but when I woke up the next morning, something like 5 or 6 o'clock, Charley Cheek and this prisoner was laying out in front of the tent asleep, both of them.

Q. Did Charley Cheek seem to be guarding him very strenuously? A. They were both asleep.

Mr. Warrum: We object to that, if the court please. "Strenuously" calls for some kind of a comparison.

Mr. Lucas: I will withdraw the term.

1327 Q. You say Mr. Cheek was asleep? A. Yes, sir.

Q. How far from Berkell was Mr. Cheek?

A. They were laying side by side.

Q. Now, after the other deputies were withdrawn, just what was the nature of your duty there?

A. Well, we were sent down there as peace officers.

Q. You didn't have any particular posts?

A. We had no posts, no, sir,—the Hartford Valley.

Q. Do you remember the day of the battle?

A. Yes, sir.

Q. Three or four nights before that do you recall any shooting in the vicinity of the camp?

A. Well, a few nights before, I don't know how many, there was some shooting back toward Hartford.

Q. Do you know where that shooting took place, approximately? A. Well, they said it was at Frogtown.

Q. About how far was Frogtown from the camp, from No. 4 shaft? A. Something in the neighborhood of 2 miles.

Q. About what time of night was that?

A. Somewhere along about midnight.

Q. Where were you when you heard that shooting?

A. Well, I was asleep when the shooting started.
Q. Did it awaken you?
A. I was awakened by the shooting, yes, sir.
Q. Who was there when you were awakened?
A. Mr. Chitwood and Mr. Holt.
Q. Was there anybody else there, or did you have a
1328 tent to yourselves? A. We had a tent alone.
Q. What did you do after having heard that shooting and being awakened by it?
A. Holt and I got up and dressed and walked around to where the men were on post, where the company men were doing guard duty, and everything was quiet with them, and we came back and went back to bed.
Q. Did you find all of the men on those posts of duty?
A. Yes, sir.
Q. Did you make that round immediately after that shooting was heard? A. Yes, sir.
Q. And you found every man on duty at every post?
A. Yes, sir.
Q. Could it have been possible for any one of those men to have gotten back from Frogtown after you heard that shooting?

Mr. Warrum: The defendants separately object to that question, for the reason that it calls for a conclusion on the part of the witness. He can state the facts and let the jury determine.

Mr. Lucas: I will go on to something else for the present, and hold that question in abeyance.

Q. Will you explain how that guarding was taken care of? As I understand, it was not done by the deputy marshals? A. No, sir.
Q. Who were doing the guarding?
1329 A. Company men.
Q. Where were they posted?
A. One was out at the high tension line up near the Union Hall; one was over by the fan house; another one over at No. 3 slope; and there was one at the gate to the enclosure.
Q. Is that 4 posts altogether? A. Yes, sir.
Q. How many posts were there in the day time—those four?
A. No, sir. They didn't guard the high tension line in the day time.
Q. How many guards were out in the day time when you were there? A. Three, I think.
Q. And how many at night? A. Probably four.

Q. And those were company men during the time you were there? A. Yes, sir.

Q. Now at the time of the shooting over at Frogtown, were there other guards that were not on duty in the camp?

A. Well, I suppose there was one or two, something like that.

Q. Do you know for sure? If not, we can probably cover that by some other witness. A. Well, I wouldn't say.

Mr. Warrum: Are you advising this witness?

Q. Now, Mr. Schell, were you present on the day of the battle? A. Yes, sir.

Q. How did you happen to be at the camp, if you had been withdrawn as a deputy marshal?

1330 A. When we was withdrawn it was on the 16th of June. I came to Fort Smith, and Mr. Holt was going down there to work for the company. I didn't want to work for them. Mr. Holt wanted me to go down there and stay in his place until he could get over there Saturday or Sunday. So I went down with Mr. Finley, I believe, in a car, on the evening of the 16th, and the riot occurred on the night of the 16th or the morning of the 17th.

Q. What happened during the night?

A. Some time after late bed time the lights went out. After the lights went out a little while there was several shots apparently in the neighborhood of the Huntington road, and everything quieted down and we went to sleep, went back to bed. About 6 o'clock we had breakfast in the morning. One of the company men came around and asked me if I would go with the electrician out to the high tension line up through by the Union Hall up there. I told him yes, I would walk up there. We went and was out 30 or 40 minutes. I believe it was Busten Moore came to us and told us there was trouble down at the camp, to go back down there. We went down to the camp, and then is when the trouble started. The trouble was on when we went back.

Q. How long did you stay at the mine that day?

A. Until about 12.30.

Q. Did you at any time during the morning hear an explosion? A. Yes, sir.

Q. Will you describe that, please?

A. Some time along about 11 o'clock there was a heavy explosion. We was all standing around No. 4 shaft,

1331 and a gush of dust came up through the shaft, and the earth was shaken considerable there.

Q. What caused that dust to blow up through the No. 4 shaft?

A. It must have been a dynamite explosion underneath.

Q. Where was that explosion?
A. They said it was up at No. 3.
Q. Before you left, did you see any smoke or flames at any of the buildings around about there?
A. Not only up on the hill back of the old camp.
Q. Describe that, please.
A. Back between Frogtown and No. 4 on the hill there was company houses. They had been set afire and was burning when we left the mine.
Q. Were they located in the direction of Hartford?
A. Yes, sir.
Q. The shooting you have described, where did it come from?
A. Well. it started, it seemed as though it was on the left of the Union Hall and back around on the Huntington road.
Q. That was over toward Sugar Loaf Mountain?
A. Yes, sir, and back around to the west.
Q. As you were leaving did you see any men coming up?
A. Yes, sir, I seen some men come up there.
Q. Were they employees of the mine that had been there with you and the other men?
A. No, sir, they were outsiders.
Q. Were they union men? A. I couldn't say.
Q. Were they men that had been employed there 1332 while you were there? A. No, sir.
Q. Before you left that vicinity did you see No. 4 shaft burning? A. Yes, sir.
Q. When was that, Mr. Schell?
A. Well, I was quite a little piece away and I saw the smoke rise and the flames break out, back in the direction of No. 4, and later on when we was on high ground we could see it very plain, and could see it was No. 4.
Q. Do you know about what time in the day that was?
A. Somewhere about 1, probably 1.30.
Q. I neglected to ask whether the night before the battle you heard any whistles blow?
A. Yes, sir, I heard whistles blow?
Q. In what direction?
A. Well, they was in practically all directions.
Q. Whistles were blowing all around? A. Yes, sir.
Q. What time was that?
A. Well, it was after midnight.
Q. Do you know Dr. King? A. Yes, sir.
Q. Was there an occasion where Dr. King, immediately following the day of the battle or on the day of the battle, met you? A. Yes, sir.
Q. Will you describe that, please?

A. I met Dr. King out on the road in his car, and he was going to Fort Smith. So I gave him my guns. I think
1333 there three of them. He was to return the guns to me the next day, but when I came to town, why, it was on Sunday that I met him again, and he told me the guns had been stolen from the garage; but after I talked with him a few minutes and requested that one special gun I had be returned, he said, "Well, when a party comes in from a ball game I will get that gun."

Mr. Warrum: I can't hear you.

The Witness: He said when a party came in from the ball game he would get that one gun for me.

Q. (By Mr. Lucas) Just go right on.

[Q.] So about 4 o'clock in the afternoon we walked around to the garage, and he went in ahead of me, and a few minutes later I walked on in and he gave me, I believe, two of the guns, but the one that I asked him for especially, and he said, to me, "Better put that on." I told him I thought I was old enough to know what I was doing, and I put it in my suit case. When I came outside there was a little city detective around there and he stopped me and searched me. He talked of taking the guns from me, and I told him no, I didn't think he would. So he asked me to open the suit case, and I did.

Mr. Warrum: Now, if the court please, we object to this. This was in Fort Smith, as I gather from the testimony. I don't know how far that is from the peaceful valley of Hartford, but it is some distance. This is an altercation with a city detective that certainly would not be competent here.

Mr. Lucas: We can stop at that point.

Q. Do you remember who any of these men were?
1334 Who was the detective? A. Shaw, I believe.
Q. Was his name Homer Shaw? A. Yes, sir.

Mr. Lucas: I will withdraw the question which was held in abeyance awhile ago, to which objection had been made.

Q. Referring to the shooting that occurred over at Frogtown, did you start out immediately to all of the posts?
A. Right away, yes, sir.
Q. How long did it take you to make the rounds of these posts? A. Probably 30 or 40 minutes, something like that.
Q. And how far did you say it was from the camp to Frogtown? A. Something like about 2 miles.
Q. When you reached the point nearest Frogtown did you find that man, that guard there on duty? A. Yes, sir.

Mr. Lucas: That is all.

The Court: Cross examine.

Cross Examination

By Mr. Warrum:

Q. Do you know where Dr. King lives? A. No, sir.
Q. You know he lives in Fort Smith, don't you?
A. Yes, sir, he lives in Fort Smith.
Q. And you met him on the road down near Hackett City?
A. Somewhere down in that part of the country.
Q. And he suggested that you turn your guns over to
1335 him, or did you suggest it?
A. He asked me to give them to him.
Q. How many guns did you have?
A. I don't know, two or three.
Q. Your own guns? A. One of them was.
Q. Whose were the others? A. I don't know.
Q. How many guns had he collected down there at that time? A. I don't know.
Q. How many guns did he have? Did he have an automobile? A. Yes, sir.
Q. How many guns did he have? A. I don't know.
Q. Did you see any others? A. No, sir.
Q. You turned over your three guns? A. Yes, sir.
Q. One was yours and two belonging to somebody else?
A. Yes, sir.
Q. How many guns did you ever see at the camp?
A. At the camp?
Q. Yes. A. Oh, I don't know, probably 30 altogether.
Q. You have seen 75, have you not?
A. There may have been, I don't know.
Q. You were a deputy marshall until the 16th or 15th
1336 of July? A. Yes, sir.
Q. Then your commission expired, and you continued on with the company? A. No. sir.
Q. Did you remain there just as a guest?
A. I remained for Holt until he come back.
Q. In what capacity?
A. Just to help him out so he could come back.
Q. Were you helping Holt out or helping the Bache-Denman Company out? A. I was helping Holt out.
Q. What was Holt doing?
A. Holt was going to take a job there.
Q. You were just serving as a company guard?
A. No, sir.

Q. What was Holt going to do?
A. Holt was going to go out as a guard there.
Q. And were you obligating him by acting in his place as a guard?
A. I was only going down there to stay at the camp until he came back the following day.
Q. How could you accommodate Mr. Holt by simply staying at the camp, if you didn't discharge any of his duties?
A. He had no duties until he came back.
Q. Oh. No duties at all?
A. No, sir, no duties at all.
Q. But he wanted you to go down there and sit in the camp in his place?
1337 A. Stay until he got there.
Q. I see. On the occasion of this man Berkell, you said you didn't know his name, but your attention has been called to it on your direct examination. You know to what I refer to, don't you, the incident of the arrest of the man who was brought in? A. Yes, sir, I know when he came in.
Q. And you stated to Mr. Langford, or whatever guard had him in charge, that as deputy United States marshal you had no authority to receive a prisoner from them, and declined to receive him? Is that right?
A. That is right.
Q. And you did not take charge of him? A. No, sir.
Q. And he was turned back into the custody of one of the guards for the Bache-Denman mine?
A. I never turned him to nobody. I never had him to turn.
Q. Wasn't he turned over to Charley Cheek?
A. I don't know.
Q. He was with Cheek that night?
A. Cheek arrested him.
Q. And he remained with Cheek until the next morning?
A. They slept together.
Q. And he was put in a car with Mr. Langford and brought to Fort Smith? A. I don't know where he went.
Q. You don't know that? A. No, sir.
1338 Q. Mr. Langford was not a United States marshal?
A. No, sir.
Q. Did you hear that man say he had an old mother and wanted to go home that night to see her? A. No, sir.
Q. Did you hear him ask to be released at all?
A. No, sir. I was not present when they brought him down there.
Q. You don't know whether he made any protest against his detention or not?

A. I don't know what his protest was.

Q. Let me call your attention to the incident at Midland. You say there was a banner stretched up there, bearing the words "Remember Ludlow"? A. Yes, sir.

Q. And they pointed to it? A. Yes, sir.

Q. And they discussed it? A. Yes, sir.

Q. Do you know what they referred to?

A. Well, I would naturally suppose it was the battle they had at Ludlow.

Q. Didn't they say at that time that the non-union guards in Colorado had killed 23 union people in the union camp at Ludlow, and that they did not intend to have that thing happen in that vicinity? A. I didn't hear that statement.

Q. Did you hear anything of that kind at all?

1339 A. No, sir.

Q. Now, on the occasion of the shooting up of Frogtown—you testified on the former trial of this case, didn't you? A. No, sir.

Q. Was your deposition taken in New York City?

A. Yes, sir.

Q. In this case? A. Yes, sir.

Q. That would mean that you testified. We understand each other, do we not? A. I guess so.

Q. In that deposition you testified as to the visit you made to different posts on the occasion of the shooting in Frogtown, that you testified to on your direct examination here?

A. Yes, sir.

Q. What condition did you find the men in the camp in? Were they up? A. They was a party of them up.

Q. What were they doing? A. They were gambling.

Q. There was a good deal of gambling going on there, was there not? A. Oh, at times.

Q. There was a good deal of drinking going on there?

A. I didn't see any.

Q. You never saw any drinking at all? A. No, sir.

Q. You never saw any whisky in the camp?

1340 A. No, sir.

Q. Nor any other liquor? A. No, sir.

Q. But there was a good deal of gambling going on?

A. Some gambling, yes, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

J. L. FINNEY, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Give your name to the reporter. A. J. L. Finney.

Q. Where do you live? A. I live here in Fort Smith.

Q. You are not the Mr. Finney who testified in this case before? A. No, sir.

Q. That was your brother? A. Yes, sir.

Q. What business are you in?

A. I am an accountant.

Q. Where did you live in 1914? A. Huntington.

Q. Huntington, Arkansas? A. Yes, sir.

Q. How long had you lived there?

1341 A. With the exception of about 3 years, I lived there since 1887.

Q. What 3 years?

A. 1899 and 1900, and I believe about 1902. I lived in Van Buren for one year, and I lived 2 years in Lavaca and Booneville.

Q. You knew practically everybody in Huntington in [19194], did you not?

A. Well, I wouldn't say I knew practically everybody, but I knew a good many people there.

Q. What business were you in?

A. I had been in the grocery business for a number of years.

Q. And you were still in that business in 1914?

A. No, I wasn't in any business at that time.

Q. Were you there at the time?

A. I was there at the time, yes, sir, had been there for about 11 or 12 years then.

Q. Were you a member of the United Mine Workers?

A. Yes, sir, I was a charter member of the first organization, I think, that was organized at Huntington.

Q. When was that?

A. That was away back in 1894 or 1895, early in the 90's.

Q. Was that District 21?

A. There was no district at that time. I think it was organized under the International.

Q. That was before District 21 was organized?

A. Yes, sir.

Q. How long were you a member?

A. I don't know, I think about a year and a half.
1342 Q. Did you work in the mines then? A. Yes, sir.
Q. Now, Mr. Finney, what is the population of Huntington, about, or what was it at that time?
A. Well, at that time, the population was about 1700. The 1910 census gave it 1700, and there were about the same number of people there in 1914.
Q. What occupation did most of the men there follow?
A. Well, they were miners.
Q. What percentage would you say, roughly?
A. I would judge something like 75 or 80 per cent.
Q. The rest of them followed other occupations?
A. Merchants and professional men. The town was tributary to the mines. There was no farming community around there to amount to anything. Every body depended more or less on the mines and mining trade.
Q. Where did the miners work?
A. They worked principally for the Central Coal & Coke Company. They had the largest mines there. There were some small mines around there that some men worked at, but the most of them worked for the Central.
Q. How far away was the Bache-Denman mine?
A. The Coronado mine was about 3 miles, I think, No. 4, I believe they call it No. 11 now for the Central, No. 4 is about 5 miles from Huntington, I think.
Q. Mr. Finney, do you remember when the open shop attempt was made by the Bache mines there in 1914?
1343 A. Yes, sir.
Q. Was that talked of in Huntington? A. Yes, sir.
Q. Much or little? A. Very much.
Q. By everybody? A. Practically everybody.
Q. By all the men?
A. The men talked about it a great deal.
Q. Did you hear considerable of that discussion?
A. Yes, sir.
Q. In your store?
A. I was not running the store at that time. I heard it on the street.
Q. In the town of Huntington? A. Yes, sir.
Q. State what that discussion was?

Mr. Warrum: Now, if the court please, the defendants separately object to a question of that kind, because it undertakes to get from the witness an opinion statement as to the substance of conversations that covered a period of months, with no attempt to secure a statement made at the particular time by any particular man.

Q. (By The Court) Can you state what you heard stated and who stated it?

A. I couldn't designate any particular person that made any statement.

1344 The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. (By Mr. Drinker) State what that discussion was.

A. The discussion was generally on the subject of working open shop.

Q. And what was said about that?

A. The union miners said they were not going to permit it.

Q. Did they state why? A. Yes, sir.

Q. Did the men for the Central Coal & Coke Company mines state why?

A. They said if they allowed the Bache-Denman mines to run open shop it would be but a short time until they would all be open shop.

Q. Did they say how that would come about?

A. It would come about through the coal being produced for a cheaper price, and would hinder them in making future contracts.

Q. Future contracts with whom?

A. With the operators.

Q. With what operators?

A. The Central Coal & Coke Company, for one. The operators, I don't think, at that time were organized in an association like they are now, but they made contracts with the different operators. In 1914 I believe they were. Yes, in 1914 the Southwestern Interstate Coal Operators' Association was functioning, and they made their contracts through the operators' association in joint conferences, and they

1345 said it would hinder them in making their contracts, so they wouldn't get as good terms, and consequently the operators would employ non-union miners.

Q. What operators would employ non-union miners?

A. All the operators in the district, eventually.

Q. Did they say what would happen to them?

A. Well, they said they would have to get out and go somewhere else where there were union mines and find employment; that they wouldn't work open shop or non-union.

Q. That was the employes of the Central Coal & Coke Company that you are talking about?

A. Yes, sir, the union men at Huntington, generally.

Q. Was anything said by them about the shipment of coal by the Bache-Denman Company? If so, state what.

A. Well, they said they would not permit that non-union coal to go onto the market in competition with union coal.

Q. Did these conversations in Huntington occur a few times or many times?

A. Many times. It was discussed every day.

Q. During that period?

A. Yes, sir, during the period of that non-union work at No. 4.

Q. You have heard that yourself? A. Yes, sir.

Mr. Drinker: You may cross examine.

Cross Examination

By Mr. Warrum:

Q. Do you know something about the operators' asso-
1346 ciation? A. Yes, sir, I know something of it.

Q. Is your brother a Commissioner for the Association? A. He was for a number of years, yes, sir.

Q. They have an organization of operators?

A. Yes, sir.

Q. And your brother was Commissioner for it?

A. Yes, sir, he was Commissioner for this district.

Q. They are pretty well organized?

A. Yes, sir, he was conversant with all their business.

Q. And the miners had an organization? A. Yes, sir.

Q. And they would meet every two years or so and negotiate a wage scale with the operators, if they could?

A. Yes, sir.

Q. And from time to time they would discuss their union affairs, and you heard them? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And during the Bache-Denman trouble they discussed the situation that prevailed under non-union conditions. Is that right? A. Yes, sir.

Q. And they were interested in their wages and working conditions. Is that right? A. Yes, sir.

Q. And that is all they were interested in as workers? Am I right?

1347 A. I couldn't say that was all they were interested in.

Q. They stated, I understood you to say on direct examination, that under non-union conditions, if there were non-union mines, they would hire cheap labor and it would interfere with their negotiating a wage scale with the operators' association. Is that right? A. Yes, sir.

Q. And that was something they were interested in, being able to make their contract with the operators' association for the wages that they were to get, and the working conditions that they were to labor under. Is that right?

A. I suppose they were, yes, sir.

Q. You know that, don't you?

A. I know they were interested in it, yes, sir.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. Have you stated on your direct examination why they were interested and the reasons that they gave?

The Court: Oh, he has gone over that.

Mr. Drinker: Stand down.

(Witness Excused.)

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Mr. Lucas: We offer the deposition of Dr. H. P. Routh, taken at Tulsa, Oklahoma. (Reading):

"Q. Your name is Doctor H. P. Routh? A. Yes, sir.

Q. And your office is 702—

1348 A. 701 and 2, Daniels Building, Tulsa, Oklahoma.

Q. Where is your residence? A. 709 North Main.

Q. You lived in Hartford and practiced medicine there from 1909 to 1916? A. Yes, sir.

Q. And then you joined the army? A. Yes, sir.

Q. Did you know the citizens of Hartford fairly well?

A. Yes, sir.

Q. About how large a town is Hartford—was it in 1914?

A. Fifteen hundred or two thousand.

Q. And of what class of business, of people, was it mainly composed, if any predominated?

A. Practically the only industry there was coal mining.

Q. And were the miners—the main inhabitants were coal miners and their families? A. Yes, sir.

Q. Were they members of the United Mine Workers?

A. Yes, sir.

Q. All of them? A. So far as I know, they were.

Q. The people who were not members working in the mines, were they in sympathy with the mine workers, or otherwise?

A. Well, I don't know. I think you might say they were divided on that. I think they were in sympathy with some

things and some they would not be exactly in sym-
1349 pathy with, while others they were. That is a pretty hard question.

Q. Did you hear and take part in, during 1914, conversations and discussions with Union members relative to Union affairs? Union interests?

A. Yes, sir; there was scarcely—every week there was—scarcely a week passed there was not a lot of differences coming up and we were bound to hear it and know more or less about it, those things that were coming up, and going on, yes.

Q. State whether or not during and prior to 1914 you heard discussions by or in the presence of Union miners as to the factors entering into one coal mine getting business from another and as to the elements of the competition among the different coal mines in the different markets to which they shipped? Did you hear such discussion?''

Mr. Warrum: I made no objection at the time, if the court please. The defendants separately object to that question, for the reason that it is leading and suggestive. Further, that the attention of the witness has not been called to anything said or any particular person, nor is there any effort to show what particular persons or persons he had the conversations with, and the question seeks to obtain from the witness a general opinion as to his conclusion of the general tenor and effect of discussions he heard in Hartford.

The Court: He may answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

''A. Well, I don't know just what you mean as to
1350 competition. Yes, sir, there was always competition.

Q. Was there discussion about it?

A. Well, not so long as the operation of any individual mine was in conformity with existing contracts at that time because the Union miners regulated that and took their turns. Locally I don't think so.

Q. Did you hear during the spring of 1914 any discussion in Hartford relative to the Bache-Denman Company's operations?

A. Yes, that was the year that they tried to operate open shop and there was unlimited discussion about it. You could hear it on all sides and every day. It was a perpetual thing and everybody was discussing it. It was discussed by everybody because it affected everybody's business—mine as well

as every one's [elses],—as to whether or not the mines operated. It brought on a crisis. It naturally affected everybody.

Q. Was there discussion that you heard as to what the miners believed and stated would be the effect if Bache-Denman Company got started open shop and was allowed and permitted to operate that way?"

Mr. Warrum: The defendants separately object to this question for the reason that it is leading and suggestive; for the further reason that the witness' attention has not been called to any conversation that he had with any particular person, nor has there been an effort made to examine the witness as to what particular person or persons he had any conversation with, and for the further reason that the question seeks to obtain from the witness a general opinion of some of his conclusions as to the tenor and effect of discussions
1351 heard in Hartford; and for the reason that the question is leading and suggestive.

The Court: He may answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. Do you understand the question doctor—after all that objection? A. Yes, sir.

Q. Please answer.

A. Well, it would naturally, if Bache-Denman were going to operate open shop it would force the other mines to attempt it in order to compete with it was the consensus of opinion of the organized miners that they were going to try to produce cheaper coal than could be produced by Union miners; in other words, it was an attempt to change the scale; that is the way I understood it.

Q. Was there discussion by the miners as to what if any effect it would have on the relations between the Union and the other operators in that district, Number 21?"

Mr. Warrum: The defendants separately object for the reason that the question is leading and suggestive; also asks the witness to state in a general way his summary of discussions that he heard without any interrogation as to who said it. There is nothing to indicate that anyone engaged in these discussions to bind the defendants or any of them.

The Court: Let him answer.

To which ruling and action of the court the defendants
1352 at the time duly excepted and still except.

"A. Well, their idea was that, too; that is, it was the opinion that it would give Bache-Denman an advantage over the other mines if they had to adhere strictly to the Union contract and Bache-Denman were producing cheaper coal. The others would be working at a loss and the others would have to shut down if they could not operate open shop as Bache-Denman were, and if they were forced to operate under the existing contract they could not sell coal as cheap as Bache-Denman they would operate at a loss.

Q. Now, were the questions covered by your last two answers discussed in your presence by Union miners?

A. Yes, I talked to and heard them—they were discussed everywhere and all the time. It was the burning question. Naturally as I stated before, it was a crisis in the community. People had their personal ideas about it. They had property there and everybody was interested. It was a very prominent question and discussed very prominently.

Q. Do you remember any particular time when you heard a discussion of that matter at the Davis Hotel?

A. Yes, I remember; I remember the discussion but I can not state with reasonable accuracy the date it was, I wish I could, I can not remember the names of the parties I heard discussing it, I wish I could.

Q. If you do not remember the names do you remember what, if any, positions or offices were held by officers to participate in that discussion?"

Mr. Drinker: May I suggest that that is not the ques-
1353 tion I asked? I think what I asked was this: "What, if any, positions or offices were held by the parties who participated in that discussion".

Mr. Warrum: All right. If you say that is the question, let it go at that.

Mr. Drinker (reading):

"A. Yes, sir. I was at the Davis Hotel on a certain occasion when the District Board was down there relative—

Q. District Board of what? A. District Number 21.

Q. Yes.

A. The District Board was down there to settle some matters at Central No. 4. I was at that time boarding at the Davis Hotel.

Q. And did you hear any conversation in which the Board Members, the members of the District Board, District 21,

participated, and heard same as to these matters, at that time?

A. Yes, sir, they were discussing that matter at this time, and they were —

Q. What matter?

A. The matter of this non-union—

Q. Bache-Denman operations?

A. Yes, sir, it was during this time and it was just a general discussion in which there was possibly eight or ten taking part. They had had a meeting that day and they were just discussing the effect it would have on the price of coal in Arkansas and Alabama and other places as to whether they could meet the price or not.

1354 Q. And do you remember anything else as to the substance of that discussion?

A. Well, the only thing, I think I answered that before, was that if Bache-Denman were going to operate that way the others were going to operate that way if it could be done—the others were going to follow suit.

Q. Was anything said at that time relative to any interest that other operators in that District had in the outcome of the Bache-Denman operation? Do you understand the question?

A. Yes, sir. I did more work for the Central Coal and Coke Company than anyone else and their head offices were in Kansas City and I don't know what their attitude was in regard to giving aid.

Q. I didn't ask you what you knew yourself; I asked you if you heard these people talking about it—these District Board members, whether they were at that time talking about that?

A. I could not say specifically if they were or not. It was the very general discussion and I know that their feeling was—

Q. Go on with your answer, if you please."

Mr. Warrum: At that point, if the court please, he states in his answer what the feeling was. I object to that.

The Court: That will be sustained, as to what their feeling was.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Mr. Drinker: Leave out where he says "it was just the general feeling of the miners locally", and go on after that.

1355 Mr. Warrum: Do you mean to answer the question?

Mr. Drinker: Oh, no. Skip to the next question at the top of page 15:

"Q. And did you hear discussion by the Union miners as to the reasons the Union miners believed that the operators were not all working open shop?"

Mr. Warrum: That is objected to as leading and suggestive, and because it calls for a conclusion on the part of the witness as to the character of the statements he heard and their effect upon his own mind, detailing the conversation.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. Why, yes, they were.
Q. Doctor, you have stated that it was the general impression amongst the Union miners that all the operators around were desirous of running open shop. Why did they believe the operators didn't go open shop if they wanted to go open shop?"

Mr. Warrum: Defendants separately object to the question because it involves the assumption of the previous testimony of this witness which we do not believe has occurred, and because it calls for an opinion or conclusion on the part of the witness as to the motives and reasons which governed the mental processes and conclusions of the mine workers.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

1356 "A. Well, I think that would be because it involved the same processes and expenditures and was experimental, the same as the Bache-Denman were. They knew the Union would resent it and oppose it in every reasonable way, I think; and it was rather experimental and expensive to make the change; that is the only reason I could state. That is my conclusion. That they could run their mines steady if they had open shop and they could produce the coal as cheap as they wanted to and they naturally wanted to hire and fire everybody at liberty, which they could not do under the contract—they had a contract covering that."

Mr. Warrum: If the court please, that very answer shows the impropriety of the testimony.

The Court: I think so.

Mr. Drinker: He meant that was his conclusion as to what the subject of the discussion was.

The Court: No, I think not. Let it stand.

Mr. Drinker: I am willing to have it stricken out if the other side objects. This whole business from the place about the miners' feelings. Strike it all out from the place where he spoke about the miners' feelings.

The Court: Very well.

Mr. Drinker (reading):

"Q. Did you know Jim Slankard? A. Yes, sir.
Q. Nick Guise? A. Yes, sir.
Q. Did you ever hear them discuss the matters to
1357 which you have referred in your several answers, prior to July 17, 1914, relative to the several questions I have put to you? A. Yes, sir.
Q. How do you spell that name Guise?
A. G-e-i-s. I knew those two men very well and this man Geis I have done a lot of work for him and he was rather elated and he talked a great deal, and I talked about the matter to him like I would to you by asking questions—I liked to know about the things that were going on around, and their objection to non-union work was just what I have explained. The Union miners wanted to work so many hours at a certain price and that was the thing that caused a great deal of trouble. There was a lot of discussion over dead work, but the principal thing was the hiring and firing of men. Their contention was that under non-union work a man had no assurance that a man was going to hold his job and could make any permanent arrangement for living, and that kind of thing, and another thing that they were very much opposed to was the foreigners coming in. They were very much opposed to foreigners coming in and taking their place.
Q. Did you ever hear any discussion by either of these men as to the effect of Bache-Denman getting started open shop on the other mines and the relations of the Union with them?"

Mr. Warrum: Defendants separately object to this question because it asks for a conclusion of the witness and it is leading and suggestive.

The Court: Let him answer.

To which ruling and action of the court the defendants
1358 at the time duly excepted and still except.

"A. Yes, they all said that if Bache and Denman made a success of working open shop that the Central Coal and Coke Company would follow; that was the belief of the Union miners. You could get that from any source because it was just generally discussed that they believed that the Central Coal & Coke Company would follow suit right away because they worked more men than anyone else there.

Q. Do I understand that you mean by your answer that Jim Slankard and Nick Geis were two of the people that discussed this thing with you when you said they all did; did you include them?

A. Yes, sir; I have talked to them specifically. I wanted to know. I asked questions. I have gone down into the mines to see what they were doing and was familiar with the operations and the men.

Q. And you discussed that same thing with many other miners than Geis and Slankard?

A. Yes, sir. I told you I think that was every miner's opinion. I think all of them were of that same opinion.

Q. Did you hear any discussion amongst the Union miners prior to July 1, 1917, relative to the permitting of small co-operative mines to run during a strike or suspension?"

Mr. Warrum: Defendants separately object to this question because it is leading and suggestive and calls for a conclusion on the part of the witness as to the character and summary of the statements that he heard but doesn't draw the witness' attention to any particular time, person
1359 or place or ask for any such statement.

The Court: I don't see that that has anything to do with it.

Mr. Drinker: The answer will show, your Honor.

Mr. Warrum: His answer was that he didn't understand the question.

The Court: It is getting very far out.

Mr. Drinker: If your Honor desires to know the purpose of it, the purpose is to show that the union, at times of suspension, permitted their members to operate little mines on a cooperative basis, in order to keep hospitals and public utilities supplied.

Mr. Warrum: We will admit that.

The Court: That would not make any difference. I can't see what it proves.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Mr. Drinker: You may cross examine.

Mr. Warrum (reading):

"Q. What time did you leave Hartford?
A. I left there in—I left there in the fall of 1917—'16 or '17—when the war started.
Q. And you have lived away from there since?
A. Yes, sir.
Q. You didn't testify on the former trial of this case?
A. No, sir.
Q. When was your attention first directed toward the happenings at Hartford in 1914, how recently?
A. With reference to this case?
1360 Q. Yes. A. Last spring or early summer.
Q. Someone call on you last spring or early summer?
A. Yes, sir. Mr. Finley I have known a good many years.
Q. Was it last spring? Did he tell you there might be a retrial of this case and he wanted you to testify?
A. Yes, sir.
Q. And he saw you again in the summer?
A. Yes, sir, he saw me about a month later.
Q. When did you first recall this conversation, this conversation that you heard of the District Board at the Davis Hotel in Hartford, in 1914?
A. Well, that was rather a coincidence and the only reason that I could recall all about it was the association with that matter that I had. The house next to mine caught fire that night and almost burnt up and [my] came very near burning up and I went over to the Davis Hotel and had to stay there until I could get my affairs arranged.
Q. But I am asking you this question: When was your attention first called to this conversation that you heard between or statements made by the District Board members at the Davis Hotel; was it along in the summer when you talked to Mr. Finley? A. Yes, sir.
Q. You told him then about that statement of the District Board members? A. Yes, sir.
Q. Did he tell you the kind of testimony he would
1361 like to hear? Did he tell you the character of testimony that they would like to have on the next trial of this case?

A. No, sir, he didn't. He just asked me what I knew about it.

Q. And you recalled the statements made by the District Board at the Davis Hotel back in 1917?

A. Yes, sir; that was rather an accident, because—

Q. You have a recollection for a number of things they said—

A. Yes, sir, because I remember this incident about having the house burnt down, and I know we had a time getting a place to stay because of this meeting being on there and I went over to the hotel and they were crowded and we had a great time getting a place to sleep.

Q. And there was a good deal of discussion in Hartford in 1914? A. Yes, sir.

Q. And a lot of excitement there? A. Yes, sir.

Q. They had guards thrown out at one time around the town?

A. Yes, sir, they had five troops of the Fifth Cavalry.

Q. I am talking about the guards that the mayor—weren't there guards thrown out around the town to prevent an attack of the gunmen?

A. I heard there was. I was not in Hartford at that time.

Q. You were not there?

A. No, sir, I was not in Hartford during the time of the trouble. My father was in bed sick and I had gone up to Fayetteville and was coming back by train at Fort Smith and had to stay there all night and missed it all.

1362 Q. What time did you go to Fayetteville?

A. About the 12th or 13th.

Q. The 12th or 13th?

A. Yes, sir, and all this excitement happened while I was gone and it was all over when I got back."

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1363 Mr. Lucas: We next offer the deposition of JOHN WESTON, taken at Tulsa, Oklahoma.

(The deposition was read by Mr. Hardin, asking the questions, and Mr. Lucas reading the answers.)

"Q. Your name is John Weston? A. Yes, sir.

Q. You are the son of the man who was just in here testifying? A. Yes, sir.

Q. Where do you live at the present time? A. Oilton.

Q. Were you living at Oilton in 1917 when you testified in this case before? A. Yes, sir.

Q. You did testify in this case before? A. Yes, sir.

Q. You were supplied with a copy of your previous testimony this morning to refresh your memory?
A. Yes, sir.
Q. What is your business, Mr. Weston?
A. In 1917 I was a teamster; I am a tank builder now, a steel tank builder.
Q. Were you living at Prairie Creek in the spring and summer of 1914? A. Yes, sir.
Q. Was your father running a mine there?
A. Trying to.
Q. Where was that mine with reference to Prairie Creek Mine No. 4?
1364 A. About a quarter of a mile, I suppose it was north.
Q. Mr. Weston, with reference to that direction, was it up the creek away from the Midland Valley tracks that your father's mine was located? A. Yes, sir.
Q. It was on the same side of the tracks that Prairie Creek No. 4 was located? A. Yes, sir.
Q. And it was about a quarter of a mile away?
A. Yes, sir.
Q. If I were to tell you that direction is more northeast, that was what you intended by your answer, would that be true?
A. I was turned around in that country,—that would be right.
Q. At any rate, you know the mine was located away from Prairie Creek town? A. Yes, sir.
Q. Opposite the mountain? A. Yes, sir.
Q. Were you there the day of the big battle on July 17?
A. Yes, sir.
Q. Did you hear the battle start? A. Yes, sir.
Q. What time in the morning, about, was that?
A. About 7:30.
Q. 7:30 was the first shooting that you heard, was it?
A. Yes, sir.
Q. Where were you when that shooting started?
1365 A. I was going down after ice.
Q. What town were you going to? A. Hartford.
Q. Just what part of the road were you on when the shooting started, the road toward Hartford?
A. I had just turned the corner at the School House when the shooting started.
Q. The road from your father's mine led down to Prairie Creek No. 4 mine and made a turn at the school house to the left into Hartford? A. Yes, sir.
Q. Did they fire over your buggy? A. Yes, sir.

Q. The firing started then from the mountain?
A. Yes, sir.
Q. Who were up in the mountains doing the firing?
A. I could not say, who the people were; I suppose they were Union people.
Q. At any rate the firing didn't start from the camp, the Prairie Creek No. 4 camp? A. No, sir.
Q. Just about how far beyond the School House had you proceeded when that firing started?
A. I could not say.
Q. Had you just turned the corner?
A. Just a short distance.

Q. Were the men who did that shooting from the
1366 mountain, were they concealed up in the timber?
A. Yes, sir, they were up on the side of the hill.

Q. Could you give any idea how many shots were fired?
A. That would be pretty hard to answer.
Q. Were there just a few or quite a number?
A. Quite a number.
Q. If you said on your previous testimony that there were three hundred, would you say that was probably correct?
A. I suppose there were that many, at least.
Q. Did you see any men with guns at that time on your way to Hartford?
A. No, right close I didn't. When I went down the road farther I met some.
Q. When you got down the road a little farther you saw some? A. Yes, sir.
Q. Was there any occurrence when you met these men down the road; did they say anything to you?
A. No, sir, there was not, I just drove on down the road until I met a man I knew and I asked him if it would be safe for me to go to town and he said yes.
Q. To refresh your memory,—you were asked before, "How many men with guns did you see? and you answered, "Go to town?"
'Q. No, right there;
'A. I suppose [twnety-five] anyhow.
'Q. Did you know any of these men? 'A. I did not.

'Q. Had you ever seen them before?
1367 'A. Not as I know of.

'Q. Do you know whether they were miners?
'A. I wouldn't say as to that.
'Q. What did you do then? 'A. I stopped first.
'Q. Then what did you do?
'A. They told me to get out of there and I went down the road."—Do you remember anybody telling you that?

A. They were up on the hill.
Q. Did you meet anyone on your way that you knew?
A. I met Frank Scofield.
Q. Did you have any conversation with him?
A. Yes, sir, I asked him if he thought it would be safe for me to go up to town.
Q. You were going in the direction from the mine when he told you it would be safe for you to go in that direction?
A. Yes, sir.
Q. Did he have a gun with him?
A. No, sir, not that I saw.
Q. Mr. Weston, what was your reply as to how many guns, did you see that morning?
A. Well, sir, after I got down the road from where the shooting was I guess I didn't see nobody there I knew.
Q. You were asked when you testified before, did you see any men with guns on the way into Hartford, to which you replied, "Yes, sir," and you were then asked "About how many?", to which you replied, "About three or four
1368 hundred"—does that refresh your memory?
A. That was after I left Scofield—after I had started on.
Q. In which direction were these men going?
A. Going towards Prairie Creek.
Q. Did any of them have high-powered guns or shot guns?
A. They had all kinds.
Q. Guns of various descriptions? A. Yes, sir.
Q. What caliber?
A. I suppose anything from 22's on up.
Q. What time of the day did you return from Hartford?
A. I started I guess about 5 o'clock.
Q. What did you find when you got back to No. 4?
A. Everything burning up.
Q. Were there many men around there then?
A. No, sir.
Q. Where were the scab men who had been there in the morning? A. They were gone.
Q. They had left the place? A. Yes, sir.
Q. Mr. Weston, did you have anything to do with hauling some cars out of the Prairie Creek No. 4 enclosure?
A. Yes, sir.
Q. How many cars did you haul out of there?
A. Four.
Q. What did you use to get them out of there?

A. Team.

1369 Q. Whose team? A. Father's.

Q. Were those cars empty or loaded? A. Loaded.

Q. Which direction did you pull them out toward the tipple or from it?

A. Towards the tipple, away from the scales down towards the tipple.

Q. What were those cars loaded with? A. Coal.

Q. Did you pull any of them completely off the track?

A. Yes, sir, one of the tracks, all the wheels.

Q. Had you had anything to do with loading those cars?

A. No, sir.

Q. They were not loaded from your father's mine?

A. No, sir.

Q. Where was the team track that went into the enclosure with reference to the scales and the tipple track?

A. Well, it seems to me it was northwest.

Q. What direction with reference to your father's mine?

A. South.

Q. Was it towards your father's mine? A. Yes, sir.

Q. Was there a car burned over on that team track?

A. Yes, sir.

Q. Where did it stand with reference to the scales?

A. Well, north and west of the scales.

1370 Q. Was its position on the team track about opposite the scales? A. Yes, sir.

Q. How far was the scales from where that car was burned on the team track where it stood?

A. I judge 200 feet.

Q. You pulled, you say, four loaded cars out toward the tipple? A. Yes, sir.

Q. Was there a car standing on the scales when you were pulling these cars out?

A. There had been and it was burning up.

Q. There was not much left of it? A. No, sir.

Q. And you of course did not include that car in the number you pulled out? A. No, sir.

Q. How did you [heppen] to pull them out?

A. The railroad conductor got me to pull them out.

Q. Who was that party? A. I could not remember.

Q. To refresh your memory, was it Mr. Frank Pigg?

A. Yes, sir, my father has known him for years.

Q. What yould you say was the distance from the tipple to the scales? A. About 600 feet.

Q. When you got there and were pulling these cars out, were there any burnt cars in between the scales and the tipple? A. No, sir.

1371 Q. The cars that you pulled out stood between the scales and the tipple, they were all in good condition so that you could pull them out readily? A. Yes, sir.

Q. Now, Mr. Weston, as to the space between the scales and the car that was [burn] over on the team track, was there anything that was burnt in between those two points?

A. Not that I remember.

Q. There were no buildings that stood in between there that had been burnt? A. No, sir.

Q. Mr. Weston, do you recall in a general way what sort of day it was? A. No, sir, I could not tell you.

Q. Do you remember that it was particularly windy?

A. I don't know that it was. It was warm.

Q. You don't remember that there was any particular wind that day? A. No, sir.

Q. What time of the day was it that you were actually engaged in pulling these cars out? A. Just about sundown.

Q. What was the condition of the mine tipple and the other properties when you were pulling the cars out?

A. They had [burn] up.

Q. Was everything [burn] up when you got there?

A. Yes, sir, practically, still on fire.

1372 Q. Were you around with your father a good deal the day before this battle came on? A. Right smart.

Q. You were working along with him?

A. Yes, sir.

Q. You remember the Union men coming to him and giving him warning that things were going to happen over at Number 4,? A. Yes, sir.

Q. You remember their visits when they spoke to him about running Union or running fair, as they called it?

A. Yes, sir.

Q. Did you hear any of them tell him that they would give him warning and notice in time to get out of there?

A. Yes, sir.

Q. Do you know who the men were who gave the warning to your father? A. No, I could not remember them.

Q. You could not identify them? A. No, sir.

Q. Were they Union miners? A. Yes, sir.

Q. When you were on your way to Hartford that morning when they shot up over your head, who was with you?

A. Fred Bryant.

Q. Who was he?

A. He was our pit boss if we ever got to work any.

Q. Was he a Union miner?
1373 A. He had been and he joined again, I guess, while we were there.
Q. Your father was intending to work Union?
A. Yes, sir.
Q. Mr. Weston, did you hear Frank Scofield say anything about having been hurt in the leg? A. Yes, sir.
Q. When was that?
A. Just a day or two after the battle.
Q. What did he say to you about it?
A. Just—something was said about it, and he said he got shot in the leg in the battle."

Mr. Warrum: The cross examination was waived.

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Mr. Lucas: We next offer the examination of MACK WESTON, JR., taken at the same time and place.

(The [depositing] was by Mr. Hardin reading the questions and Mr. Lucas reading the answers.)

"Q. Your name is Mack Weston? A. Yes, sir.
Q. Mack Weston, Jr. A. Yes, sir.
Q. Are you the son of the Mack Weston that testified in here a few moments ago? A. Yes, sir.
Q. Where do you live, Mr. Weston? A. Oilton.
Q. Have you a brother? A. Yes, sir.
1374 Q. What is your brother's name? A. John.
Q. Was he just in here testifying a moment ago?
A. Yes, sir.
Q. Where were you on July 17th, 1914?
A. I was at Prairie Creek, Arkansas.
Q. Do you remember the battle on that day?
A. Yes, sir, I remember the battle but I don't remember the date.
Q. Did your father have a mine down in that vicinity at that time? A. Yes, sir.
Q. Where was that mine with reference to Prairie Creek No. 4?
A. It was about three quarters of a mile, I believe, east.
Q. That is at the creek? A. Yes, sir.
Q. Were you working around there with your father and brother most of the time? A. Yes, sir.
Q. Just prior to the big battle, whenever that occurred?
A. Yes, sir.
Q. Do you remember any of the union men coming and discussing whether he was going to work "fair" or not?

A. Yes, sir.
Q. They meant whether he was going to work "union"?
A. Yes, sir.
Q. You were with him at times when they came and asked him these questions?
1375 A. Yes, sir, I was several times.
Q. Did you hear any of them tell him they would give him warning about when there was going to be anything done at No. 4? A. Yes, sir.
Q. And after such warnings had been given, did you get out of there the day after the battle? A. How is that?
Q. After such warnings had been given you and your father, you got out? A. But I didn't get any warning.
Q. You didn't actually receive the warnings?
A. I didn't until after the first battle.
Q. That was the first you knew of the first battle?
A. About four o'clock in the morning.
Q. And what was the next thing?
A. It was about seven-thirty or eight when the next one started.
Q. Was that when the battle began in earnest?
A. About seven-thirty it was or eight o'clock.
Q. Did you see any men with guns that day?
A. Yes, sir.
Q. Any of them come around the camp, to your camp, near where your mine was? A. Yes, sir, they did.
Q. Were they union men?
A. Well now, I suppose they were.
Q. Had you seen them around there before?
A. Yes, sir, I saw them before.
1376 Q. And they were miners, were they?
A. Supposed to have been.
Q. Were any of them the same ones who had been talking to your father? A. I believe they were.
Q. Did they tell you anything when they came to your camp that morning?
A. They said we better be leaving, move on around the hill.
Q. Did they tell you why you had better leave?
A. They said there might be a little trouble around there soon.
Q. Where did they mean?
A. I suppose they meant up around four.
Q. Did they have any guns?
A. Ten or fifteen of them were in that bunch.
Q. How many men did you see altogether that day?
A. About two hundred and fifty.

Q. Were they mostly armed? A. Yes, sir.

Describe just where you went with your mother when you went out?

A. Across the creek and went around the hill toward Dunn's from four.

Q. Around back of the hill where they had told you you had better go? A. Yes, sir.

Q. Who was Mr. Dunn?

A. A little farmer who lived around there.

Q. Who is your uncle living up that way?

1377 A. Newt Brown.

Q. What is his full name?

A. Sterling Newton Brown.

Q. Were there any other families up that way?

A. He lived up there and old man Dunn lived up there and Jim Dunn lived up there.

Q. When you testified before regarding your aunt living up there, was that Mrs. Brown?

A. Yes, sir, that was his wife.

Q. Did you hear any shooting after you got up there?

A. Yes, sir.

Q. How long did it continue? A. Quite a while.

Q. How long with reference to the time of day, approximately? A. Right at twelve o'clock it happened.

Q. When did you return to your own camp?

A. About between one and two o'clock.

Q. At that time did you see anything of the fire at No. 4?

A. Yes, sir.

Q. What was burning?

A. The tipple was burning then.

Q. What time was that?

A. Between one and two o'clock when I went up there.

Q. Were there any of the company men there who had been there before the battle?

A. No, sir, there was not, none, no-sir.

Q. Did you see any union men there?

1378 A. I suppose they were union men.

Q. What were they doing?

A. They were disposing of that stuff around there.

Q. What do you mean by disposing?

A. They were burning it.

Q. Were they burning all the property?

A. All that was there, all that I saw there.

Q. Were they going from one building to another?

A. They were firing these tents, suit cases and stuff there.

Q. What was the condition of No. 4 at that time, was it pretty well consumed or in the process of being burned?
A. Yes, it was pretty well burned up.
Q. And as much as was left was being burned by them then? A. Yes, sir.
Q. Do you remember John Manick? A. Yes, sir.
Q. Did you see him around there that day?
A. Yes, sir, I believe I did.
Q. What was he doing? He was there at No. 4?
A. Yes, sir, I believe he was.
Q. What was he doing?
A. Just the same as the rest of them.
Q. And what was that?
A. Burning up those tents and suit cases, I believe he was there.
Q. Did you see any fire set to some of the buildings on some night about that time? A. Yes, sir.
1379 Q. When was that? What is your best recollection of when that was?
A. It was at night but I don't remember the time of the night.
Q. Was it nearer the time this battle occurred?
A. No, it was after this big battle occurred.
Q. Approximately how many nights afterwards?
A. I don't remember just how many.
Q. Was it near to the battle or was it quite a long ways afterwards? A. A little while afterwards.
Q. Just what did you see in that connection? Describe.
A. I saw them just going from one house to another, touching them off.
Q. How many of them were there in the party?
A. There were,—I know of five, shooting backwards and forwards across the street.
Q. And they were miners?
A. They were supposed to have been.
Q. Where were these buildings that they were burning?
A. They were back up the hill from No. 4.
Q. Do you know where Goo-Goo-Eyes was?
A. What is that?
Q. A fan house.
A. Yes, I knew where the fan house was.
Q. Was it in that vicinity? A. Yes, sir, up that way.
Q. And in the direction of No. 3? Do you know
1380 where No. 3 mine was?
A. To tell you the truth, I was turned around in that country, and which way was No. 3 from No. 4?

Q. These buildings were up back in the hill in the vicinity of the fan house? A. Yes, sir, up in that country.
Q. What were they using in setting fire to these buildings?
A. They were using bedding, excelsior and stuff like that.
Q. You know Jim Meeks? A. Yes, sir.
Q. Did you have any conversation with him about this time? A. Yes, sir.
Q. About when did that conversation take place? Was it before the battle? A. No, it was afterwards I believe.
Q. Just what did he say to you?
A. Why he was talking about it and showed me—he showed me three or four teeth that he had gotten off of these fellows.
Q. What did he say?
A. He said he had some of them marked all right.
Q. What did he mean? A. Some of the scab miners.
Q. Mr. Weston, you were asked before "What did he say?" and you said "He said he had two or three of these scabs marked, said he had their teeth marked, said he would get two or three of their teeth so they would know that they had been some place". What did he mean by "had been some place"?
1381 A. So they would know they had been there at No. 4.
Q. That part of your previous testimony that I have read was correct, was it not? A. I think it is.
Q. Mr. Weston, Mr Lucas has just called my attention to the fact that before you testified you stated that this conversation took place before the battle. What is your best recollection of that?
A. I believe it was afterwards, I am not positive but I believe it was.
Q. Was it just about the time of this trouble?
A. Just about the time.
Q. You know Clint Burris? A. Yes, sir.
Q. Did you see him around there the day of the battle?
A. Yes, sir.
Q. What was he doing?
A. I saw him down there by our place that day.
Q. Was he helping these other men who were burning the place?
A. Yes, sir, I suppose he was. It has been so long ago I can't remember.
Q. What makes you think he was? You say you suppose he was. Can you not be more exact than that?
A. He was up there.
Q. At No. 4? A. Yes, he was up there.

Q. Helping these other men that you have already
1382 described? A. Yes, sir.
Q. Did you help haul any cars out of there that day?
A. Yes, sir.
Q. What time of the day was it?
A. It was after the fire, after they had set the tipple on fire, I don't remember just what time of the day it was.
Q. Was it towards night? A. Yes, sir.
Q. Who were you helping to do it? A. My brother.
Q. At whose instance did you take these cars out? Who asked you to take those cars out?
A. The railroad company.
Q. How many did you haul out of there? A. Four.
Q. Were they loaded? A. Yes, sir.
Q. What with? A. Coal.
Q. In what direction did you haul those cars?
A. Toward the tipple.
Q. By what means did you haul them?
A. I used my father's horses.
Q. Was there a car standing over the scales when you were hauling these cars out? A. Yes, sir.
1383 Q. Had it burned? A. Yes, sir.
Q. Had it been loaded with coal? A. Yes, sir.
Q. Was there a team track? A. Yes, there was.
Q. Where was it with reference to your father's mine? Was it between the tipple and your father's mine?
A. Yes, sir.
Q. There was a car burned on that team track, was there?
A. Yes, sir.
Q. Was it loaded? A. Yes, sir.
Q. What with? A. Coal.
Q. How far was that car, where it stood partly burned, from the scales?
A. It was about, to the best of my knowledge now, it was about 200 feet.
Q. Were there any intervening buildings that had been burned between the car on the scales and this car on the team track?
A. No, sir.
Q. What is your best recollection as to the type of day that it was, as to the weather conditions?
A. Well, it was a pretty warm day, a very warm day.
Q. Do you remember any particularly strong wind that had been blowing? A. No, sir.
1384 Q. What would you say was the distance from the scales to the tipple? A. It was about 600 feet.

Q. And these cars that were pulled out were standing between the scales and the tipple? A. Yes, sir.
Q. None of them had been disturbed?
A. None of them that we were pulling on had been burned.
Q. Were there any other cars in there that you remember?
A. I don't just remember.
Q. Mr. Weston, with reference to the five men of that party who were burning up the buildings after the battle, was that just a matter of a few nights afterwards or was it a matter of a few months afterwards?
A. It was a few nights afterwards: I was not down there a few months after that.
Q. How many of those men did you know?
A. I knew the biggest part of them.
Q. Who were they of those you knew?
A. I don't know the names of them.
Q. You remember seeing John Manick?
A. I believe I do.
Q. He was in that party? A. Yes, sir.
Q. Do you remember seeing Clint Burris in that party?
A. I am not positive.
Q. Mr. Weston, of these five men, had you seen any
1385 of them working around there before?
A. No, sir, I had not seen them.
Q. Mr. Weston, on your previous testimony you were asked, on redirect examination, whether you knew that they were union miners there that you heard, and you answered "Yes", were you referring to those five men that were going around there? A. Yes, sir."

Mr. Warrum: Now, if your Honor please, that question was withdrawn; it covers half a page, and is intended to insert into the record his former testimony, and ask him whether or not he testified to that effect upon the former trial.

Mr. Lucas: I do not believe the objection was interposed at that point, as the witness answered the question now being read.

Mr. Warrum: Then I object to it now.

Mr. Lucas: Then we will leave that out.

"Q. Mr. Weston, do you know Clint Burris?
A. Yes, sir.
Q. You knew him at that time? A. Yes, sir.
Q. Did you know John Manick at that time?
A. Yes, sir.

Q. Did you hear them say that they belonged to the United Mine Workers of America?

A. Yes, I heard them talking about it, yes, belonging.

Q. Did you hear them talking about District 21?

A. I believe I have but I don't know what district that was.

1386 Q. Just to be certain I asked you about Frank Schofield, did I not? A. Yes, sir."

Mr. Grant: (Reading)

"Q. Mr. Weston, when you testified before, gave your deposition down in Drumright, you were asked this question: 'Did you see them set fire to any buildings," and you answered "I saw them when the house burned up one night".

A. Yes, sir.

Q. Then you were also asked "I mean did you see anybody setting fire to any buildings?" and you answered "Yes, sir, I did". That is your testimony, isn't it?

A. Yes, sir.

Q. And you were also asked "Who were they?" and your answer is "I don't know their names". That is correct, isn't it? A. That is correct.

Q. Then you were next asked "You saw John Manick there?" and your answer was, "No, sir, I don't know as I did." That is correct, isn't it? A. That is what I said.

Q. And you say that here this time, here, "Yes, that is correct?" A. Yes, sir.

Q. I see further on in your testimony that you were asked if you knew Clint Burris, and you answered "Yes, sir". That is correct, isn't it? A. Yes, sir.

Q. And they asked you, "Did you ever see him around
1387 there the day of the battle?" and you answered "Yes, sir." That is correct, isn't it? A. Yes sir.

Q. Then they asked you, "Did you ever see him around there the day of the battle?" "Yes, sir, that is correct", and they asked you "What was he doing?" and you answered. "Doing the same stuff the rest of them was. Helped burn the stuff up, getting rid of it." A. Yes, sir.

"Q. Can you name others that you saw doing the same thing?" and you answered "No, sir, I don't believe I can". That was correct, was it? A. Yes, sir.

Q. And he asked you "Do you know Sandy Robinson?" and you answered "No, sir". That is correct, is it?

A. Yes, sir.

Q. And in giving that testimony you also were asked this question, "You don't feel kindly toward them, do you",

(Meaning the men down there in that part of the country) you were asked that, and you said, "No, sir, I don't". Is that correct? A. Yes, sir.

Q. Your answer was, "No, sir, I don't." You say your answer is correct? A. Yes, sir.

Q. And you don't feel kindly toward them now, do you?

A. No, sir, I don't.

Q. Then you were asked this question: "In fact you
1388 don't like the miner's union, do you?"

A. The miners' union might be all right but their anarchy isn't.

Q. You were asked, "You don't like the members of the Miners' Union?" and you answered "No, sir, I don't". That is the way you feel about it yet, is it?

A. Yes, sir.

Q. Then you were asked the next question, "None of them?" and you answered 'None of them down in that country". You don't like them down in that country now?

A. No, I don't think I do."

Mr. Drinker: (Reading)

"Q. Mr. Weston, did you continue down in that part of the country after the battle? A. Yes, sir, a while.

Q. Do you remember were you down there when your father was given a warning in Hartford that there was going to be further trouble? A. Yes, sir.

Q. Were you working that day?

A. I was working that day, yes, sir, I believe, I was.

Q. Was that some two or three months after the battle?

A. Yes, I believe it was.

Q. Were you down in the vicinity of the tracks where the coal was loaded?

A. Yes, sir, I was hauling coal all the time when I worked." * * * * *

"Q. Mr. Weston, were you still working around your
1389 father's mine when he got back, just before the second trouble that took place, when he got back from Hartford just before the second trouble? A. Yes, sir.

* * * *

"Q. When you father returned from Hartford, did he tell you anything that caused you and the rest of the men there to leave?" * *

"A. To make us want to leave?

Q. Yes, sir. A. Yes.

Q. I asked you those questions to establish the time. Now at that time, do you have any recollection of there being any

cars loaded with coal down on the tracks where you had been loading the coal?

A. To the best of my recollection there was about a car and a half.

Q. Was it yours? A. No, sir.

Q. Coal loaded by someone else?

A. Yes, sir, they hauled the last day I did.

Q. Do you know who loaded that coal?

A. Supposed to be scabs." * * * * *

"Q. Was anybody else loading coal there that you know of besides your father and Bache-Denman?

A. No, there was not then.

Q. And that coal had not come from your father's mine?

A. No, sir.

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1390 Mr. Lucas: We next offer the deposition of T. A. HALL, taken at the same time and place.

"Q. What is your name, please? A. T. A. Hall.

Q. Your address please.

A. I live at 516 North Boulder, but I am going to move tomorrow; in Tulsa, Oklahoma.

Q. What will be your address?

A. I think it is 701 North Elwood. I think that is the number. It is on the corner and that would be the number I believe.

Q. You were living in Hartford, Arkansas, in 1914?

A. Yes, sir.

Q. How long had you lived there prior to 1914?

A. Something like three or four or five years. I don't just remember.

Q. And you lived over there until after October of that year? A. Yes, sir.

Q. When did you move away from there?

A. A year ago last April.

Q. You were living there until then? A. Yes, sir.

Q. Since about 1909?

A. I think that is the year I went there.

Q. What business were you in there?

A. In the livery business.

Q. All that time?

A. No, sir. I was in the livery business about ten years.

1391 Q. And you lived there from 1909 up until after 1914?

A. Yes, sir.

Q. In connection with your business did you come in contact with the people of the town to a large extent?

A. Yes, sir.
Q. And know a great many of them? A. Yes, sir.
Q. How large a town was Hartford in 1914?
A. I think the census showed 2317 people.
Q. Now of what class of people was Hartford mostly composed? What kind of work did they do?
A. The greatest industry was mining.
Q. And the miners lived in Hartford? A. Yes, sir.
Q. And what can you say approximately, the men of the town were in the coal mining business directly connected with it, in a general way, what proportion?
A. I suspect . . .
Q. In a general way?
A. I would say 90 per cent. of them.
Q. Were the men who worked in the mines members of the United Mine Workers, all of them? A. I think so.
Q. What mines were located in the immediate vicinity of Hartford that these men worked in?
A. There were several mines. Let me see. The Central Coal & Coke Company.
1392 Q. They had [vie] mines, didn't they?
A. Not at that time.
Q. Three?
A. Well, I think they only had one, Number 4.
Q. What other companies?
A. The Doland-Darnell Coal Company, the Bache-Denman Coal Company, and I don't know anyone else—whether there were any Patterson companies or not. There were three or four companies. Of course there are more now.
Q. Now in the town of Hartford at that time was there much discussion amongst the miners as to mining conditions and mining matters?
A. Well, during the time of that trouble there [wss] quite a lot of discussion.
Q. Was there discussion at that time, in the spring of 1914, relative to the Bache-Denman Company attempting to operate open shop? A. Well, I don't know.
Q. Did you hear that matter discussed amongst the miners?
A. Well, I—when they tried to operate those mines over there that was the general discussion of the people over there. Everybody was interested directly in the way the mines were operated.
Q. And that was discussed? A. Yes, sir.

Q. Frequently or infrequently? You mean it was discussed all the—

A. They didn't [telk] all the time—of course they slept and eat—but it was . . .

Q. It was frequent discussion?

1393 A. Yes, sir, it affected everybody." * * * * *

"Q. Was the question discussed as to what would be the effect on the other mines? The Central and these others if the Bache-Denman Company operated open shop? * * * * * * *

"A. I don't think that was discussed at any time. I don't think they were considering the aftermath of that condition. It was the thing right there then at that time that they were talking about—the idea of those people working over there under those conditions, etc. I don't think the after condition was discussed.

Q. Do you know what was the belief in the community as to what would happen to the other mines if Bache-Denman mines got started open shop? * * * * * *

"A. I do not know that that was discussed among the people. Everybody in a general way I knew, although I was not interested in the mining business. * * * * *

"Q. Having heard his objection, will you go ahead and answer the question and we will find out what is a proper objection when we get before the court.

A. I can only state from my own judgment and knowledge of conditions. I have been interested in mines more or less and I knew conditions and everybody knew that had any sense that if Bache-Denman ran open shop there it would eventually put the other people out of business because they would have to follow suit.

Q. Had you ever been in the Bache-Denman mines?

A. No, sir.

1394 Q. Had you ever heard anything about that?—their size?

A. My knowledge of mining would give me an idea about that.

Q. As to the size and position of the Bache-Denman mines among the others?

A. I knew about the size and position of them.

Q. But you did not know except from what you heard from other people?

A. I knew what they were doing all the time. We knew the output of the mines out there." * * * * * *

"Q. Judge Hall, you signed one of the bonds didn't you that were given in the Prairie Creek trials? A. Yes, sir.

Q. And were you given an indemnifying bond to indemnify you? A. I don't know.

Q. Did the United Mine Workers give you any bond to indemnify you against damage?

A. I don't think they did. Mr. Milmeyer and I signed some bonds for some of the boys over there. I don't think that I got any bond in return for it. I would not say as to that because that is several years ago.

Q. You don't remember anything about Pete Stewart signing a District 21 bond?

A. I don't remember anything about that."

Mr. Warrum: The cross-examination was waived, but the witness was recalled, and it shows in the record as cross-examination.

Mr. Drinker: Yes, sir.

1395 "Witness recalled by the plaintiff.

Q. Were you ever a member of the United Mine Workers yourself? A. Yes, sir.

Q. When? A. I don't know when that was.

Q. After 1914 or before? A. Afterward.

Q. Are you now a member? A. No, sir.

Q. In 1914, one of your boys worked in a Union mine, didn't he? A. When was that?"

Mr. Warrum: I object to that as an attempt to impeach their own witness.

Mr. Drinker: I will not press it.

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Mr. Lucas: We next offer the deposition of J. B. MARTIN, [take] at Ardmore, Oklahoma, October the 10th.

"Q. State your name? A. J. D. Martin.

Q. Where do you reside at the present time?

A. Healdton, Oklahoma.

Q. With what company are you connected with?

A. The Brooks-Owen Company.

Q. Where were you residing in July, 1914?

A. Hartford, Arkansas.

Q. How long were you a resident of Hartford?

A. About 13 or 14 years.

Q. When did you move there?

1396 A. In April, 1905.

Q. And continued to reside there until when?

A. In April, 1919.

Q. What was your business when you were at Hartford?
A. I operated a mine part of the time.
Q. What mine?
A. The Conroy Coal Company and Martin Range Coal Company.
Q. You were operating the coal mine during July, 1914?
A. Yes, sir.
Q. Which one?
A. Bull Moose Mine of the Conroy.
Q. Where is it located?
A. Just outside of the city limits of the city of Hartford.
Q. What other mines were located at Hartford and vicinity at that time?
A. Prairie Creek No. 4, Mammoth Vein Coal Company, one called the Dallas mine, but I don't know what company it was.
Q. Were any other companies operating around Hartford? A. The Central Coal & Coke Company.
Q. Mine known as the Bolen Darnall Mine?
A. Yes, sir.
Q. Were they worked by miners living in Hartford and vicinity? A. Yes, sir.
Q. What was the population? A. About two thousand.
Q. What was the chief industry? A. Mining.
1397 Q. What percentage of the residents were miners?
A. About eighty percent.
Q. Of that percentage, what number would you say were members of the United Mine Workers of America?
A. All miners around Hartford were Union men.
Q. Union town? A. Yes, sir.
Q. Were the miners accustomed to engage in discussions and conversations regarding mining matters and union matters?
A. Yes, sir, it was very customary for them to engage in street talk regarding mining.
Q. Were these subjects a general conversation?
A. Yes, sir, you could hear them anywhere.
Q. Did you observe and hear any discussions during July and prior thereto in 1914 on the part of the union miners of Hartford with reference to the operation of open shop miners in the vicinity of Hartford, if so, state the substance of such discussions?''

Mr. Warrum: The defendants separately [objection] to the question, because it asks for the witness to characterize the nature and substance of discussions covering a long period of time without pointing out any particular conversation at

any particular time, and because the question is leading and suggestive; also it calls for a conclusion or inference on the part of the witness.

The Court: Let him answer it.

To which action and ruling of the court the defendants at the time duly [accepted] and still [accept].

"A. I don't know that I could state the circumstances
1398 I heard so much of it. I was among them a great deal and I don't know that I could be definite.
Q. Discussions were general? A. Yes, sir.
Q. Heard it talked on all sides?
A. Yes, sir, but I heard only one side of the subject.
Q. What were they saying regarding open shop mines in their vicinity?
A. I don't remember of anything in particular, but as a whole, of course, they objected to the open shop mine as a general objection.
Q. In the course of such discussions, did they give any reason for this opposition to open shop mines?
A. Nothing only the general reason that they didn't want non-union labors in that vicinity.
Q. In their discussions did they assign any reason why they didn't want open shop labor in their vicinity?
A. No, nothing more than that they didn't want non-union labor in that field.
Q. Did they in such discussions, state what effect it would have on union mines in that vicinity?
A. Not that I know of.
Q. In the discussions engaged in by the union miners of Hartford during July, 1914, and prior thereto, did you hear any talk about non-union shops shipping coal from other states, if so, state the substance of discussions."

Mr. Warrum: That is objected to there for the rea-
1399 sons given and the further reason that it is leading and an attempt on the part of counsel to suggest the answer to the witness that is desired.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

"Q. Did you observe and hear any discussion on the part of the union miners at Hartford during this same period regarding the attempt of the Bache-Denman Company to go

open shop and Prairie Creek No. 4, if so, state substance of their discussions?

A. I couldn't give substance of the public talk, about the only talk they had was to find some way to stop them in the operations.

Q. In such discussions did they say when they were going to attempt to stop the open shop operation? A. No, sir."

Mr. Warrum: The next is cross-examination, and I might just as well read it, if I don't they will.

(Reading)

"Q. You are now employed by the Brook-Owen Company at Healdton, Oklahoma? A. Yes, sir.

Q. Is that the Mr. Brooke that formerly lived at Hartford? A. Yes, sir.

Q. Your home was at Hartford during 1914?

A. Yes, sir.

Q. You heard a good deal of complaint on the part of
1400 the people as to the conduct of the guards of the Bache-Denman Company? A. Yes, sir.

Q. Said they were insulting women and stopping men on the highway. A. I believe that is true too.

Q. Good deal of feeling in Hartford against the armed guards of the Bache-Denman mine? A. Yes, sir.

Q. You remember the time, a few days before the battle on July 17th, when the people from Frogtown and a mining camp from Prairie Creek came into Hartford and stated that the town had been shot up? A. Yes, sir.

Q. They were there the next day? A. Yes, sir.

Q. You saw them? A. Yes, sir.

Q. Quite a number of them? A. Yes, sir.

Q. How far is the mining camp from Hartford?

A. [Rossibly] a mile and a half.

Q. They came in the night? A. Yes, sir.

Q. Talked about the guards insulting women?

A. Yes, sir.

Q. Of being drunk down at the mines and having liquor?

A. Yes, sir.

1401 Mr. Lucas: (Reading redirect examination.)

"Q. This talk that you have characterized in your cross-examination was on the part of all parties of Hartford?

A. Just the general public.

Q. Was the talk by the union miners?

A. Yes, sir, by the union miners and the town as a whole.

Q. Just general talk? A. Yes, sir."

1402 Mr. Lucas: We will next read the deposition of HARRY OWENS, taken at the same time and the same place. (Reading):

"Q. Where do you live? A. Healdton, Oklahoma.
Q. Did you live in Hartford, Arkansas, during 1914?
A. Yes, sir.
Q. When did you first start living there and when did you leave?
A. I was there about ten years, and I left there about five years ago.
Q. You were there approximately from 1908 until 1918?
A. Yes, sir.
Q. What work were you engaged in at that time?
A. At the time this happened?
Q. Yes, during 1914.
A. I was traveling for Ridenor-Baker Company.
Q. Did you spend any part of your time in Hartford during 1914?
A. Yes, sir, my week ends—Saturday and Sunday.
Q. Did you come in contact with the residents of the town of Hartford? A. More or less, yes, sir.
Q. What was the population at that time?
A. About 1800 or 2000 possibly.
Q. What was the chief industry? A. Coal mining.
Q. Approximately, how many coal miners in the town?
A. I would just judge about 1200 or 1400.
Q. Of that number of miners, how many were mem-
1403 bers of the United Workers?
A. My idea was that it was practically a solid union town.
Q. It was frequently discussed by them matters pertaining to the mines and to the union? A. Yes, sir.
Q. During July, 1914, or prior thereto, did you observe and hear discussions on the part of the union miners at Hartford regarding non-union coal from other states, if so, state the substance of such discussion?"

Mr. Warrum: The defendants separately object to the question because it is an attempt to secure from the witness a general characterization of conversations and discussions covering a period of years, calls for a conclusion on the part of the witness and is leading and suggestive.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Well, the main talk was that coal was coming in from Kentucky and Alabama, I believe, and at a less price than the coal produced at Hartford.

Q. According to that talk was the coal from Kentucky and Alabama non-union coal?

A. That was my understanding.

Q. The mines that you spoke of from which the coal business was being taken was of the union mines of that locality?

A. Yes, sir, all the mines were union.

Q. During the discussions above described on the part
1404 of the union miners of Hartford, was anything said with reference to the matter of Bache-Denman going open shop, if so, give the substance of discussion?

A. I do know that it was non-union and I know that the public in general was against non-union mines and that one in particular.

Q. In connection with their talk, was there any discussion as to the effect it would have on the union mines?

A. I can't say positively that I heard talk to that nature, but that was the general understanding.

Q. What was it that was generally understod?

A. [Than] non-union mines would have its effect upon union mines if that became known around over the coal fields.

Q. In what way?

A. It would naturally weaken the union. It was an organization.

Q. Was anything said about the competition that would result to union mines?

A. I can't say as far as competition is concerned but in my opinion —"

Mr. Warrum: We objected to the witness stating his opinion.

The Court: He was not asked his opinion, he was asked what was said.

Mr. Warrum: But he states that they did not give any reason —

Mr. Lucas: I don't quite follow Mr. Warrum in that as far I have gone that is the end of that question.

The Court: You are asking him and he is supposed to be testifying about what was said there.

1405 Mr. Lucas: Yes, sir.

The Court: He would not be allowed to give his opinion, that would not be material, but what was said to him might be.

Mr. Lucas (reading):

"Q. What was the general understanding on that point among the union miners?"

Mr. Warrum: We renew the objection.

The Court: All he can tell is what they talked, and what was said, he could not undertake —

Mr. Lucas: He did not say what was said, but we will not press that. (Reading):

"Q. You were about to say with reference to the competition of the union mines —"

Mr. Warrum: We wish to press the objection to this question, because it assumes what is not true when the witness was interrupted, and he was stating what his opinion was. He was asked about his general understanding on that point among the union miners, and he never concluded his sentence because I objected, and then he was asked with reference to competition of union miners.

Mr. Drinker: Leave it out.

Mr. Lucas (reading):

"Q. Did you hear any discussions on the part of the union miners of Hartford regarding the efforts being made by Bache-Denman company to clear the mines of water, if so, give substance of what was being said?

A. The only thing I know was it was generally dis-
1406 cussed that they were clearing the mine of water for the purpose of operating.

Q. At that time were the miners engaged in any violence or opposition as to what they were doing, in your personal observation? A. Not to my knowledge.

Q. In their general talks and conversations during this time, did they indicate when they were going to attempt to stop open shop operation of Bache-Denman company?

A. Not to my knowledge.

Q. Did you observe and hear any discussion on the part of the union miners at Hartford about this time, relative to their permitting or not permitting the Bache-Denman company to operate? A. I can't say that I did.

Q. Did you hear any expressions on the part of the union miners with reference to an intended interference with the Bache-Denman company going open shop?

A. I don't know that I can answer that.

Q. What was the general talk on that point?

A. Well, yes, sir, that they would be interfered with—is my opinion."

Mr. Warrum (reading):

"Q. Good deal of feeling in that community against the armed guards that Mr. Bache had at his mine. A. Yes, sir.
Q. It was talked publicly in the streets at Hartford that they had insulted women and stopped men passing on the highway and that they had shot up Frogtown?
1407 A. Yes, sir.
Q. Do you remember when Frogtown was shot up?
A. I remember about it.
Q. Shortly before the battle of July the 17th?
A. Yes, sir.
Q. People from Frogtown came into Hartford that night overland, walking, and were there the next day, were they not?
A. I was not in town then and I don't know about that.
Q. It was also said that the guards had whiskey out there and were drunk and were firing off guns, is that true?
A. It seemed to be the general talk.
Q. General talk among the people there, miners, business men, doctors and lawyers? A. Yes, sir."

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Mr. Lucas: I will next read the deposition of O. A. Brooke, taken at the same time and same place (reading):

"Q. What is your full name, please? A. O. A. Brooke.
Q. Where do you reside at present?
A. Healdton, Oklahoma.
Q. Were you at any time a resident of Hartford, Arkansas?
A. Yes, sir.
Q. When? A. From November, 1909, to March, 1920.
Q. Approximately eleven years? A. Yes, sir.
Q. What business were you engaged in there?
1408 A. The banking business.
Q. What was the approximate size of Hartford during 1914? A. About 2500.
Q. What was the principal industry of the town at that time? A. Coal mining.
Q. Could you name what parties were coal mining there in that vicinity? A. You mean what companies?
Q. Yes, what companies.
A. The Central Coal and Coke Company, The Mammoth Vein Coal Company, Prairie Creek Coal Mining Company.
Q. By these companies, there were several mines being operated in that vicinity? A. Yes, sir.

Q. What percentage of the town would you say were coal miners?

A. The entire population, almost, I would say about 98 per cent, outside of the business men they were nearly all miners or connected with them.

Q. Of that number, what proportion of them belonged to the United Mine Workers of America?

A. I think they all belonged to the Mine Workers.

Q. Hartford a union town? A. Yes, sir.

Q. As a citizen of Hartford, did you hear the miners frequently discussing mine matters and union matters?

A. Yes, sir.

Q. During and prior to July of 1914, did you observe
1409 and hear any discussions among the union miners of Hartford regarding the working time they had in their district and working time of other districts, if so, state substance of such?"

Mr. Warrum: The defendants separately object to this question, as it is leading and suggestive, and for the further reason that it asks the witness to characterize the nature of discussions and conversations that he heard over a period of years; that was ten years ago.

The Court: Yes, but let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. I heard such discussions both before July of 1914 and after.

Q. What was the circumstances of these discussions?

A. Well, the most discussed seems to have been the working time of Alabama and Kentucky over the Arkansas and Oklahoma fields.

Q. During this period I have described, July, 1914, and prior thereto, did you hear the union miners engaged in discussions regarding the non-union coals from these other states you have mentioned, if so, state the substance of such?"

Mr. Warrum: The defendants separately object to that question for the reasons heretofore given, and because it is leading and suggestive.

The Court: Objection overruled, let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. The chief objection seems to have been in preventing the work in the Hartford coal field.

1410 Q. During this same period that I have already discussed, did you observe and hear the miners engaged in discussions regarding the attempt being made by Bache-Denman Coal Company to work open shop, if so, give the substance of such discussions?

Mr. Warrum: Defendants renew their objection.

The Court: Overruled, let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. It seems that they didn't have any objections to hoisting water.

Q. What were their objections as shown by their discussions? A. Didn't want them to mine the coal.

Q. Mr. Brooke, during this same period and on the part of the union miners at Hartford and in the course of these discussions on their part, was anything said about the effect on the union it would have if Bache-Denman were permitted to ship coal, if so, state the substance of such discussions?

A. A great many of the mine workers felt that the Bache-Denman interests were being helped financially by the Central Coal and Coke Company, and that if Bache-Denman were successful working open shop, that others would follow.

Q. Was anything said by the miners in their discussions during this period as to the effect on the union if they were permitted to ship coal, as distinguished from merely [hosting] water, if so, state substance?

A. It seems that there was no objection as to the hoisting of water, but objected to mining coal.

1411 Q. You were continuously a resident of Hartford during the trouble that occurred in connection with the Bache-Denman coal properties in 1914? A. Yes, sir.

Q. During the period that they were engaged in hoisting water, was there any violence in your knowledge or observation?

A. The only violence that I recall was in April and July, 1914.

Q. And during the period between April and July, when they were hoisting water, do you recall personally, any violence having taken place? A. No, sir.

Q. Did you hear any discussions on the part of the Union miners of Hartford regarding the shooting up of Frogtown, if so, give the substance of the discussions?

A. A great many felt that it was done by the mine workers to create sympathy in their cause.

Q. With reference to the last question, Mr. Brooke, did you hear such remarks on the part of the mine workers themselves? A. Yes, sir.

Q. Mr. Brooke, did you sign any bonds in connection with the contempt proceedings or the conspiracy case that grew out of the trouble in connection with the Bache-Denman coal property of 1914 at Prairie Creek and vicinity?

A. Yes, sir.

Q. In connection with such bonds signed by you were you indemnified by any other bond? A. Yes, sir.

1412 Q. What bonds?

A. The United Mine Workers of America, District No. 21.

Q. That is, you were given an indemnitory bond by the United Workers of America? A. Yes, sir.

Q. Who signed the bond given in District No. 21?

A. P. R. Stewart.

Q. Do you know Thomas F. Lingo? A. Yes, sir.

Q. Formerly a resident of Arkansas? A. Yes, sir.

Q. About the time of this trouble in July, 1914, did you see Mr. Lingo with a jaw bone in his possession?

A. He showed a jaw bone to Mr. Holbrook and myself, and he said that it was part of a human jaw bone.

Q. Who is Mr. Holbrook?

A. He was cashier at the bank at that time.

Q. A resident of Hartford? A. Yes, sir."

Mr. Warrum (reading):

"Q. You were and are a defendant in this case, are you not, Mr. Brooks?

A. I was, but I don't know whether I am now or not.

Q. Have you been told that you were not a defendant any longer? A. No, sir.

Q. What have you been told that made you answer as you did, that you didn't know whether you were now or not?

1413 A. I don't know whether I am or not.

Q. Why do you say you don't know?

A. Because I don't know.

Q. Has the case been dismissed as to you, or do you know?

A. No, I don't know.

Q. You heard a good deal of complaint about the people at Hartford as to the conduct of the guards of the Bache-Denman mines? A. Some complaint, yes, sir.

Q. You have heard of them insulting women?
A. I don't recall such.
Q. And of arresting people on the highway—stopping them?
A. I heard of them stopping them around the mine, but I don't recall of them on the highway.
Q. And stopped a photographer from Hartford City and arrested him? A. No, sir.
Q. What were the complaints you heard regarding the conduct of the gunmen of the Bache-Denman mine?
A. They were supposed to have shot up Frogtown.
Q. People from Frogtown came to Hartford a few days before the battle? A. I think they did.
Q. You know they did, you saw some of them, isn't that true? A. That night?
Q. Or the next morning?
A. I saw them the next morning.
Q. And you heard they had been driven over the hill
1414 by the shooting of the guards of the Bache-Denman mines?
A. I wouldn't say that they were driven.
Q. Well, they left town and came to Hartford?
A. Yes, sir.
Q. How far is that?
A. I wouldn't think it was over a mile.
Q. From Frogtown to Hartford? A. Yes, sir.
Q. Did you attend the meeting on April the 6th at the school house? A. Yes, sir.
Q. Most everyone in Hartford were there? A. Yes, sir.
Q. All the business men were there? A. Not all.
Q. But most of them? A. Yes, sir.
Q. Farmers were there?
A. I don't recall that I saw any farmers.
Q. Any lawyers there? A. I don't recall.
Q. People there from Huntington? A. Yes, sir.
Q. That whole valley is union? A. Yes, sir.
Q. The clerks had an organization at Hartford, did they not—mercantile?
1415 A. Yes, sir.
Q. The barbers had a union?
A. Yes, sir, they all belonged but I don't know that they had one of their own."

Mr. Lucas (reading):

"Q. In connection with the alleged shooting up of Frogtown, by the employees of the Bache-Denman Company, did

you ever see any of them in Hartford engaged in anything other than proper conduct?

A. I don't recall having seen any guards in Hartford at any time.

Q. You were residing [it] the town of Hartford?

A. Yes, sir.

Q. Did you, personally, have any fear that they were coming into Hartford to shoot up or have any trouble?"

Mr. Lucas: There is no answer here, but do you recall the answer, Mr. Warrum?

Mr. Warrum: No, sir, but if you want to state in the record that the answer is "No, sir," it is all right with us.

Mr. Lucas: I will leave it out. (Reading):

"Q. How did you happen to attend the meeting on April the 6th at the school house?

A. About 95 per cent of the town went out and I followed the crowd—I went with the crowd.

Q. Were the merchants and citizens other than the miners solicited by the miners to go? A. Yes, sir.

Q. You were personally solicited?

1416 A. Yes, sir, I was asked by Jim McNamara to go.

Q. When you spoke about the barbers belonging to the union, what union did you refer to?

A. The barbers union.

Q. You don't know that they had a local union of their own? A. I don't think they did."

Mr. Warrum: We waive the redirect.

Mr. Lucas: We will read part of it. (Reading):

"Q. The guards were thrown out of town by the mayor?

A. I don't think so.

Q. You didn't hear of the guards being put around the town by the mayor? A. No, sir.

Q. Do you know who the mayor was at that time?

A. No, sir."

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1417 Mr. Drinker: We offer now from the former record the testimony of HUGH R. RANKIN, found on page 1765.

(Mr. Drinker reads the questions and Mr. Hardin the answers):

"Q. What is your name? A. H. R. Rankin.

Q. Talk up, so that we can hear you. If you are out playing with the boys you could make them hear. How old are you? A. I am 17.

Q. What is your father's name? A. J. B. Rankin.
Q. Did you live with your father and mother somewhere near Prairie Creek Mine No. 4 on July 17th, 1916?
A. Yes, sir.
Q. State what you remember about someone coming to your house early that morning and telling you to leave?
A. Well, one morning about 8.00 o'clock, there was—Daniels came there.
Q. Do you know where he worked?
A. He worked at No. 4.
Q. No. 4 what? A. No. 4 Prairie Creek.
Q. Did he work there before they went on a non-union basis? A. Yes, sir.
Q. What did he say to you?
A. He told us to get out of camp, that there was going to be trouble that morning.
Q. Do you remember the night of October 28, when
1418 some buildings were burned down there at No. 4 camp?
A. Yes, sir.
Q. Do you remember of your father leaving the house that night? A. Yes, sir.
Q. What did he have with him when he left? A. A gun.
Q. What did he say when he went out?
A. Well he told us, that we need not look for him back until—
Q. I can't hear you.
A. He told us that we needn't look for him back until we seen the camp burned up.
Q. What camp did he say? A. No. 3.
Q. How soon after that did you see No. 3 camp burning?
A. It was about an hour after that, to the best I can remember."

Mr. Warrum: We waive the cross examination.

Mr. Drinker: We will read it:

"Q. Where did you live? A. At Frogtown.
Q. How far from the mine? A. Which one, No. 3 mine?
Q. No. 4. A. Oh, we lived right at a mile.
Q. How far? A. Right at a mile.
Q. And you say your father left your home that night?
A. Yes, sir.
1419 Q. And he said you need not look for him back until you saw the camp burning? A. Yes.
Q. Who else was there? A. At the house?
Q. Yes, at the house. A. Just me and mamma and papa.
Q. Just you and your mother and father? A. Yes, sir.

Q. Is your mother living?
A. Yes, she is sitting right back there (indicating).
Q. Where is your father?
A. I don't know where he is at.
Q. When did you see him last?
A. It has been about three months.
Q. How long?
A. Three months. It has been going on to three months.
Q. Was he then living with you down there up to three months ago?
A. We moved to Hartford, and he left us there at Hartford, about three months ago, I guess.
Q. What time of night was that?
A. It must have been somewhere along at 11:00 o'clock.
Q. 11.00 o'clock? A. Yes, sir.
Q. He left alone, did he?
A. Yes, he went up by hisself."

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1420 Mr. Drinker: We next offer the testimony of W. B. KISSINGER, taken at the former trial, and found on page 1874 of the former record:

(Mr. Lucas reads the questions and Mr. Hardin the answers):

"Q. Where do you live, Mr. Kissinger?
A. Webb City, Missouri.
Q. Your initials are W. B. Kissinger? A. Yes, sir.
Q. What business are you engaged in?
A. Working in the mines.
Q. With what company are you?
A. Unity Mining Company.
Q. Did you ever live in the state of Arkansas?
A. Yes, sir.
Q. In what part of the state did you live?
A. I lived at Bonanza and Hartford.
Q. What business were you engaged in there?
A. Part of the time mining and part of the time in the insurance business.
Q. Did you ever work for the companies, or either of them, known as the Bache Denman Companies?
A. I worked a short time for the Bache Denman Company, or the Mammoth Vein.
Q. At what place? A. Mammoth Vein.

Q. Were you in that country about the first of April?
A. What April?
Q. 1914? A. Yes, sir.
1421 Q. Were you present at the time of the meeting out at the school house? A. No, sir.
Q. Were you working for the Bache-Denman Companies at that time? A. No, sir.
Q. Where were you working on July 17th, after that?
A. I was working for the Lafayette Company.
Q. Where were you located? A. Hartford.
Q. Do you know where the R. B. Davis Hardware Store is in Hartford? A. I know where it is.
Q. On the evening of July 16th, the day before what we call the 'battle' state whether or not you were in the Davis Hardware Store?
A. I was in there; yes, sir, I was in there.
Q. State whether or not any union coal miners came in there that evening and called for cartridges?
A. I don't know whether they were union coal miners or not, or whether they were miners; I saw them buy cartridges.
Q. Did you know any of the men? A. No, sir.
Q. What kind of cartridges did they buy?
A. Shot gun shells.
Q. Did they make that call for any other kind?
A. No, I didn't pay any attention, only I seen them
1422 get the shells.
Q. What time in the day was it?
A. In the evening.
Q. Did you hear what was said when they called for the shells? A. No, sir.
Q. Were any of them rifle shells?
A. No, sir, not that I saw or paid any attention to.
Q. Did you examine the shells yourself?
A. Yes, sir, I examined one box; a fellow opened a box and I noticed they were peculiar looking.
Q. How were they loaded? A. Looked like—
Q. Do you know where the Hartford Hardware Store was at that time? A. Yes, sir.
Q. State whether or not you were passing by that store about two o'clock that night?
A. I don't know what time; somewheres after midnight, and there were parties in the store.
Q. Was that a usual or unusual thing for the store to be open at that time?
A. It was really unusual in a small place like that.
Q. What were the people doing?

A. I never paid any attention; I passed by and went on down the street.

Q. Were any of the people going in or out of that store?

A. Yes, sir.

Q. Could you tell what they were buying? A. No, sir.

Q. Do you know Tom Smoot? A. Yes, sir.

1423 Q. What was he doing?

A. He was in the store; I passed by and noticed him in there; I never stopped.

Q. Was he one of the owners of the store?

A. He was supposed to be, I think.

Q. State whether or not he seemed to be transacting business in there? A. He was in the store.

Q. That was a hardware store?

A. Yes, sir, furniture and hardware.

Q. Could you tell whether or not they were selling shells?

A. No, sir.

Q. Did you make any inquiry of any of them as to what they were doing? A. No, sir.

Q. Did you, yourself, at that time have any knowledge that attack was to be made on the Bache-Denman mine the next morning or that night? A. No, sir.

Q. Did you see any men leaving Hartford that night?

A. No, sir.

Q. Did you see any men on the street with guns?

A. Yes, I saw some men on the streets with guns.

Q. What kind of guns?

A. I never paid any attention, some shot guns and some Winchesters.

1424 Q. Did you on the early morning of the 17th get any information about the battle that was going on over at the mines?

A. I heard it there in town that they were fighting out there, and we saw the smoke along; the tipple was supposed to be burning out there.

Q. Did you hear any—get any information about who was engaged in the battle?

A. I heard along up in the day, I couldn't say what time, that a fellow named Slankard, our constable, was killed.

Q. How did he go out there, if you know?

A. I don't know.

Q. Did you go out to the scene of the battle?

A. I went out about two o'clock that afternoon, in an automobile.

Q. Who was with you?

A. A fellow named T. T. Bumpus and Charley Dalton.

Q. Did you see Slankard while you were out there?
A. No, sir.
Q. Did you see any other officers?
A. Not that I remember of.
Q. Did you know of any of the officers trying to put down the riot, the shooting that was going on?
A. I never seen them; I heard them say they were going to.
Q. Do you know about what time in the morning that shooting began? A. No, sir.
Q. Could you hear the gun shots from the mine?
A. No, sir, I couldn't hear them.
Q. What time in the morning did you first see the smoke coming from that direction?
1425 A. It must have been nine or ten o'clock.
Q. When you got there at two o'clock, state whether or not the tipple was on fire?
A. Number Four tipple was on fire at that time.
Q. To what extent was it burning?
A. Oh, it was pretty well burned; it was all on fire.
Q. Anybody about the tipple at that time?
A. I never went down.
Q. Did you examine for gun shots anywhere on the property there?
A. No, sir. I never went down there that evening at all; I stopped up in the road.
Q. How far away from the tipple did you stop?
A. Between a quarter and a half of a mile from where we were in the road.
Q. Were you out by the school house? A. No, sir.
Q. Did you see any signs of bullet holes in any cars or any other places around there?
A. I never got out of the automobile; we drove up, this fellow named Bumpus; this fellow Dalton was supposed to be a newspaper reporter and he wanted to get information.
Q. Did you meet any men going back?
A. There was a good many people—I don't know how many, that were going towards Hartford. I don't know whether they were going to Hartford.
Q. Were they armed? A. No, sir.
1426 Q. Did you see any guns?
A. I saw one of the shot guns.
Q. Which way were they going that had the shot guns?
A. Towards Hartford.
Q. Did you see any men armed with rifles about the mine?
A. No, sir.

Q. Or anywhere in the woods along there? A. No, sir.
Q. Was a time like that usual or unusual occurrence?
A. It was an unusual occurrence. If it happened every day or two we would be in war.
Q. Then you learned before you went back whether Slankard was dead or alive?
A. I heard somebody say Slankard was all right.
Q. You didn't see Slankard out there at all? A. No, sir.
Q. You didn't see him in Hartford that morning?
A. No, I saw him that evening.
Q. What time in the evening did you first see him?
A. Oh, I don't know; along towards sun down.
Q. State whether or not there were a good many union miners living in Hartford at that time?
A. Certainly, it was a mining camp, and I expect the biggest part of the town was miners.
Q. About how many men, altogether, would you say you saw going in the direction of Hartford that day?
1427 A. Oh, I wouldn't have much idea; oh, about one hundred or two hundred men,—fellows riding and in automobiles; I wasn't paying much attention; there was an unusual amount of men to meet on the road.
Q. How long did you continue to live in Hartford?
A. Why, my family was there until the following May after that.
Q. Where did you go then?
A. I would go home every week or two; I worked for an insurance company until the first of September, and then I leased a coal mine at Kevener, Oklahoma, and I would stay down there and go home on Saturday night, sometimes every week, and sometimes every two weeks.
Q. Do you know Charles Gossett, the constable that lived there about that time? A. Yes, sir.
Q. Did you have any conversation with him about Bache-Denman operating those mines on the open shop plan?
A. That was the general talk in that country for several months; most any man you met would talk about what would be the outcome of the trouble.
Q. What was said?
A. Mr. Gossett made the remark he didn't believe they could operate it on open shop plan.
Q. Why?
A. Well, I don't know; there was a good many people thought the same thing.
Q. What did they say would be done to them?
1428 A. The property would be destroyed like has occurred all over the country for the last thirty years when disputes like that came up.

Q. Where did Mr. Gossett live?
A. Near Hartford, or did, at that time.
Q. Did you ever have any conversation with Slankard about it or hear him make any statements about it?
A. No, sir, Slankard and I never have much to say to each other.
Q. State whether or not the majority of the laborers in there about Harford are union miners, or were at that time?
A. Yes, sir, they were at that time.
Q. Did you know of any organization there other than the United Mine Workers of America, called the miners' union?
A. Oh, there are other unions there.
Q. Did you know of any other miners' union other than that one?
A. No, sir, I didn't belong to the union at the time I was working for an insurance company.
Q. You had no knowledge of any other except that one, the Miners' Union?
A. No, sir, I had no occasion to be interested because I wasn't working in the mines at that time. I heard something of the Western Federation of Miners trying to organize there, but whether they was or wasn't I don't know.
Q. Mr. Kissinger, in October, 1914, state whether or not you have any knowledge about some trouble against the officers, the United States Marshals?
A. I don't know, I came home one day from Heavener
1429 and got off the train at Hartford. There were twenty-four or five men there in Hartford and they claimed the United States Marshal was going to take the men away and they weren't going to let him do it.
Q. Were you acquainted with the men that said they weren't going to let him do it? A. I wasn't.
Q. Were you acquainted with the ones that had the guns?
A. Bill Reid and Dave Brance and a fellow we called Champion.
Q. Was George Reid with them?
A. No, sir, I saw Will Reid.
Q. Was he a union member? A. I don't know.
Q. Was Dave Brance there, too?
A. They were miners and I supposed belonged to the union.
Q. Did Brance have a gun also? A. Yes, sir.
Q. What kind of a gun did they have?
A. I never examined them.
Q. Were they in the nature of rifles or shot guns?
A. They were short looking guns.

Q. Did you hear them say why they were there?
A. No, sir.
Q. Had you at that time heard of men being taken away from the United States Marshal?
A. That was the talk at the depot, they were there for that purpose.
Q. Do you know they carried out their purpose?
1430 A. No, sir, I don't know.
Q. Did you see the United States Marshals yourself?
A. I saw Black.
Q. Did he have any men under arrest? A. I don't know.
Q. Do you know whether any men were taken away from him or not?
A. No, sir, all I know is hearsay.
Q. Did Mr. Black go away on the same train with you?
A. No, I got off at Hartford.
Q. Did Mr. Black go on to Fort Smith?
A. I don't know where he went.
Q. He was deputy marshal?
A. He was supposed to be; that is what they told me."

Mr. Drinker: Just to identify these people, on page 2382 of the former record, so much of Exhibit 182 in the other case, being the financial secretary's ledger of Local 2770, Hartford, Arkansas, as shows on page 112 that Dave Branch paid dues in January, February, March, April and May, 1914.

And from the same exhibit, so much thereof on page 106, as shows that Will Reed paid dues in Local 2270, in November and December of 1916, and in February, March, April and May of 1917.

And on page 2383, Exhibit No. 184, so much of page 154 that shows that Earnest Nein paid dues to local 1526 in the last six months of 1916.

And on page 2465, in connection with Dr. Routh's deposition, so much of Exhibit 203, being the minutes of Local 1912 of Hartford, Arkansas, on page 58 thereof, as shows that

Nick Geiss was acting secretary.

1431 The Court: Gentlemen of the jury, it has been reported to me that many of your number did not come here prepared to stand a protracted siege, and that certain of your number would like to go home over the Sabbath, so when we meet at ten tomorrow morning we will adjourn at twelve o'clock, with the understanding that you will be back at ten o'clock on Monday morning.

You will pass out, under the usual admonition which I have given you, and return tomorrow morning at ten o'clock.

(Whereupon, at 4.35 o'clock p. m., an adjournment was taken until Friday, October 20, 1923, at 10:00 o'clock
1432 A. M.)

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October 20th, 1923.

Pursuant to adjournment at 10:00 o'clock A. M., on Saturday, October 20th, 1923, Court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record.

Mr. Drinker: We will have a witness here in just a moment.

MIKE DOUGHIT, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Just state your name to the reporter?

A. Mike Doughit.

Q. Mr. Doughit, where do you live? A. Hartman.

Q. Have you lived there all your life? A. Yes, sir.

Q. Where were you employed in the spring of 1914?

A. I worked for the Bache-Denman Coal Company some that spring and summer.

Q. At which mine, Prairie Creek No. 4? A. Yes, sir.

Q. Were you employed there when they made the effort to go open shop?

A. Well, not when they first began, I went there later.

Q. When did you first go there?

A. Sometime in June, I believe.

Q. What were you employed to do there, Mr. Doughit?

1433 A. Well, I done different kinds of work; I drove a team part of the time, and worked in the mine some.

Q. Did you dig coal, had you prior to going with them, at some other place? A. No, sir.

Q. You were going to drive the team there for them?

A. I did when I first went there.

Q. Did you do any other duties than drive the team?

A. Well, I was a guard there for about two days, I believe, two or three days.

Q. You did a little guard duty in addition to driving the team? A. Yes, sir.

Q. Did you have any trouble going down there on the train [or] or about June 15th? A. Well, yes.

Q. Will you state what occurred on the train?

A. I didn't have any personal trouble with any certain man. It was just a pretty rough train to go on for all of us.

Q. What did you see and hear on the train as you were going down there, just describe fully what happened?

A. When we got over by Greenwood some men came on the train and they searched some of the boys; one man, Tom Allison, who was with me, they searched him, and shook him around a little bit.

Q. Who was Tom Allison?

A. A man that lived down in my home and working over here.

Q. Was working for the Bache-Denman Company? Yes, sir.

1434 Q. And was he going down to the mine with you that same day? A. Yes, sir.

Q. Did any more men get on the train when you reached Midland?

A. Yes, sir, they told at Greenwood,—some of the men said when we get you over to Midland,—and when we got there several got on over there, and some had some ball bats and different things in their hand. They didn't hit anybody that I seen, however.

Q. Do you remember any of these men that had base ball bats, do you remember their names?

A. Well, now, that has been seven or eight years ago, and I don't remember but one man, Robinson, and maybe two, Clint Burris, I believe.

Q. Clint Burris and Sandy Robinson? A. Yes, sir.

Q. If I may be permitted,—

A. (Interrupting) There was an other man, John Menick, or something like that.

Q. John Menick? A. Yes, sir.

Q. Did you hear these men and the other men with them saying anything what they were doing?

A. They were saying lots of things, swearing and going on.

Q. Did you hear any altercation or trouble between Clint Burris and Clarence Shaleen?

A. No, I don't think so. Not at that time.

Q. Did you hear Clint Burris address any improper remarks to anyone in the party?

1435 A. Oh, yes, to different ones of the boys, I don't remember just any certain one.

Q. What did he say, what was he doing?

A. Oh, they would just go walking through the train abusing some of the boys.

Q. Did they threaten any of them?

A. Well, they said they had better not get off down at the mine, if they did they were going to have trouble.

Q. They were going to have trouble at the mines?

A. Getting off the train, they were going to have trouble, they were not going to let them get off down there.

Q. The trouble they referred to was getting off the train?

A. Yes, sir.

Q. Did you have any trouble when the men attempted to get off the train?

A. I did not; my brother, there was someone struck at him as he started to get off, he was right behind me, and I told him to come on and some of the boys seemed to be scared to move, or get off the train and some of the men at the mine had to come in and lead the boys out of the car.

Q. Somebody had to come in and help them off?

A. Some of them, yes, sir.

Q. Who was it that struck your brother?

A. I don't remember, I don't know whether I know the man or not. He didn't hit him, he struck at him; he dodged him.

Q. At the previous trial did you testify that Sandy Robinson struck at him? A. No, I don't think I did.

1436 Q. At least you don't recall now who it was?

A. No, sir.

Q. Now, coming down to the day of the battle on July 17th, what time did you leave the Prairie Creek No. 4 camp?

A. It was about 9 o'clock.

Q. With whom did you go, who went with you?

A. My brother and brother in law, John Baskings, and three or four boys from Tennessee.

Q. You remember Sam Thomas? A. Yes, sir.

Q. Was he from Tennessee? A. Yes, sir.

Q. Did he leave with you? A. Yes, sir.

Q. What was your brother's name? A. Ewell.

Q. Do you remember a man named Syllsberry?

A. Yes, sir.

Q. What was his first name? A. Clarence.

Q. Do you remember Earl Syllsberry? A. No.

Q. Do you remember a boy that was later killed?

A. Yes, sir.

Q. Did he leave with your party when you left the mine?

A. Yes, sir.

1437 Q. Describe what happened from the time that you left the mine?

A. Well, when we left there, we went out a piece from the mine, out in some timber there, and sat down there, and thought we would wait a while until they got quiet, but it kept getting worse. We decided to get away from there and get out to Midland and catch the train and go home. So we started across the field up that road there by the mines, I don't know the direction the road lead, but we went across the open field and they commenced to shoot at us, from the thicket down there, and we turned another direction, and before we got to the thicket, we ran into a bunch of men, they ran out from the thicket and throwed their guns on us and captured us there. They took us over behind the school house, they called it the Union Hall, I believe, in behind the bank where there was a big crowd. There was a branch come down through the mountains, and they were all down in there, there was no water in it, it was dry.

Q. Who was all down in there?

A. The union men that were shooting into the camp. There were lots of them over there, they were scattered all around the mines. They kept us there a while, and then taken us on up to the foot to this mountain; there was a little log house there, and they put us all in that house. There were about eight of us, and they put us in this little log house, and left several men to guard us. So when the trouble was over at the mines, along about 12:00 o'clock, why, they began to swarm around this house, and it looked like a hundred of them. Jim Slankard called us out of the house, and said he would take us over to Hartford, and some of those boys
1438 that were captured had guns on them, and he said they would try them for carrying those guns, and the boys that didn't have any guns, they would turn us loose and send us home. So this Syllsberry boy, he went out first, him and John Baskins. He was my brother-in-law, a one armed man, and some man walked up and shot him; shot him in the side, and the boy turned around, and he shot him in the breast. They had told us if any of us run they would kill us. John Baskins was standing right by us, and I reckon he was scared so bad he didn't know what to do except to run and he started to run, and that man shot him in the back, and he fell on his face. He didn't make a racket or move; I believe he was dead when he hit the ground. The Syllsberry boy dropped back against the house, he was hollering and taking on, and he was not dead yet, and the man turned around and shot him in the face the third time, and the boy kind of groaned a little and that was the last of him. There were several standing there, they had their guns on all of us then and some man said, "What are you going to do with the rest of these fel-

lows." Right after this fellow killed those other two, Sam Thomas was setting over there, and he walked over and sat down, this man walked over and was going to shoot him; I thought he was going to [shot] him, but Sam begged off and he didn't shoot. So, when they asked what they would do with the other men, Jim Slankard said, we are going to turn them loose and let them go. "Go right up the mountain," so after we left we went up that mountain and fooled around on that mountain that evening until about 4:00 o'clock, when it commenced to rain, and we suffered a good deal before it did rain, it was awful hot, and we finally came back
1439 down and got headed toward home. We were three days on the road home. We got home Sunday night, and walked all the way back home, through Boonville, and over the mountain, and any way to get out of that country. That is all there is to it.

Q. How far did you have to walk home?

A. About eighty miles.

Q. Was this man that did the shooting that you have described,—how many men were there around there?

A. Oh, I don't know, the woods were full of men.

Q. Was there a large crowd right there?

A. Yes, sir, they told us that they had killed the men at the mines and set everything on fire, and had threw some of the men in the shaft. They didn't do that, and I don't know why they told us, but we thought they had anyway, because they were hollering and shooting down there; it sounded like two thousand shots a minute for a few minutes, but I found out later that was when the men left the mine. The boss, Bud Eustis, taken the men and went out of there, and that is when so much of this shooting occurred. They rushed in there, that is what I understood anyway.

Q. These men that were around there when this shooting took place, were they armed? A. Yes, sir.

Q. Do you know Charlie Blackburn? A. Yes, sir.

Q. Did you see him in that crowd? A. Yes, sir.

1440 Q. Was Clint Burris in that crowd? A. Yes, sir.

Q. When they took you to that log cabin, did they turn you over to any officer? A. Yes, sir.

Q. And what officer was the man you referred to?

A. Jim Slankard.

Q. John Baskins was your brother in law? A. Yes, sir.

Q. He was the man that was shot dead? A. Yes, sir.

Q. A one armed man? A. Yes, sir.

Q. Did he have a gun when he was shot? A. No, sir.

Q. Did Earl Syllsberry have a gun when he was shot?

A. None of the boys had guns then.

Q. Could you approximate in a general way the number of men that were there when this man shot those two men,—to the best of your recollection?

A. Oh, a couple of hundred I guess anyway, standing around.

Q. A couple of hundred you said?

A. They told me, some of the union men did, there were supposed to be twelve hundred men there around the mine, but I don't know how many there was.

Q. Did you know whether Earl Syllsberry had formerly been a member of the union? A. They said he had.

1441 Mr. Lucas: You may cross-examine.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused)

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1442 Elmore Searle, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is Elmer Searle? A. Elmore Searle.

Q. You worked for the Bache-Denman Coal Company in the spring of 1914 at Prairie Creek? A. Yes, sir.

Q. When did you start to work there?

A. Well, the last time I started on the first day of April.

Q. Where had you worked before?

A. I worked for O. T. Looper, awhile before that, and before that I worked for the Denman-Bache Coal Company about eight years.

Q. You had been working for the Bache-Denman Coal Company for eight years? A. Yes, sir.

Q. You were a member of the Union? A. Yes, sir.

Q. You were secretary of one of the locals? A. Yes, sir.

Q. Now, what did the Bache-Denman Company hire you to do?

A. Run a hoister engine, to hoist coal.

Q. To be an engineer? A. Yes, sir.

Q. You went there on the first of April? A. Yes, sir.

Q. Do you remember what happened on the 6th of

1443 April? A. Yes, sir.

Q. Now, describe very briefly what happened until you got up to the guard house; the other witnesses have been over that first part, so pass over that briefly, about the crowd and so forth?

A. The 6th day of April, there was a crowd of miners and men came to the mines and they stopped outside, or right at the side of the wire fence, or something they had at the mine; they stopped there for a few minutes and talked it over.

Q. They had a meeting at the Union Hall?

A. Yes, sir, and came down there. And I was in the engine room, so in about five or ten minutes, I suppose, I couldn't estimate, but I would say there was between twenty-five and fifty men walked in the engine room and called me out and told me to pull fire. It seemed like some of them were pretty mad, and got to swearing and I ran away, over where they dump coal, and I ran from there to the guard house, and when I got to the guard house the men came on up tolerably close, I don't know just the distance, and stopped, all besides two, Vester Howard and John Manick.

Q. You knew them before? A. Yes, sir.

Q. Were they union men? A. Yes, sir.

Q. Do you know if Howard occupied any position in the Union? Don't say anything you are not sure about?

A. No, I can't say.

Q. Do you know about John Manick?

1444 A. Yes, sir, he was holding an office in the local, I can't say positively what local it was, but it seems to me it was at Midland mine.

Q. Now what did they say to you?

A. Well, they come up and told me I would have to leave there, that the Denman-Bache Coal Company was not going to operate, and asked me why it was I was working, and I said that I had a wife down sick.

Q. Your wife was sick?

A. Yes, sir, she was sick, I had a wife down sick, and I had to work. Well, Vester Howard said that was not much of an excuse, that the union would take care of me, and give me a certain length of time to get out of there. About that time my little boy ran up, about seven or eight years old, and said, "Mama is dying," and she was sick, and seeing those men behind me she fainted and was sick and never got up out of bed after that, she died in about ninety days, and she never got out of bed again.

Q. What else did they say to you there?

A. They told me I would have to leave there, I could not stay there and the Denman-Bache Coal Company was not going to operate, they were not going to work the mine scabs. I can't just recall the words now that we did have. It has been so long a time, but their words were about that and

they gave me a certain length of time that I can't remember now, but I stayed two nights and one day, and then got a wagon and moved into Ft. Smith.

Q. Did they say anything at that time about the Central Coal and Coke Company?

1445 A. Yes, sir, they said that if the Denman-Bache Company operated, the Central Coal & Coke Company would open up scab work, and would be working for less wages and worse conditions than we were that day.

Q. Then you say you went away?

A. Yes, sir, I left there and moved into Ft. Smith.

Q. You moved your wife into Ft. Smith? A. Yes, sir.

Q. Did you continue working at the Bache-Denman mine?

A. Yes, sir, after we moved here, I started back to work, I went back and went to work.

Q. Now, did you see Tom King after that?

A. Yes, sir, he had been somewheres, I don't know where, he was a district or national organizer at that time.

Q. You don't know which? A. I don't know which.

Q. And tell where you saw him the different times that you saw up until the time that you left there,—what was the first time?

A. The first time I met Tommy King it was on the train.

Q. Where were you going?

A. I was going to the mines at Prairie Creek.

Q. From Ft. Smith?

A. From Ft. Smith, and he was on his way to Bonanza, Arkansas, so when he got on the train he called me over, I thought he knew I was working out there. I used to work under him when he was a pit boss.

1446 Q. Where was he a pit boss?

A. For the Denman-Bache Coal Company, sometime three or four years before that, and I ran a slope engine for him. I got on the train and sat down across the aisle from him and he knew I was a union man or had been, and he called me over to him. He told me there was an engineer man going out to the Denman-Bache Coal Company, to take charge of the engine, and he said I think that is the fellow sitting over there, and I wish you would go over and find out. I got up, since he did not know I was working there, and went over and talked to this man, and I came back and told him I thought he was mistaken, that he was not a miner at all, and didn't work around the mines. "Well," he said "there is one on the train." I supposed I was the man the Denman-Bache Coal Company had, I was working for them, and I had been.

Q. What did he do then? A. He got off at Bonanza.

Q. When was the next time you saw him?

A. The next time I saw Mr. King, I think Mr. McLachlan, Mr. King and several others were in front of the Union Hall, the local hall there.

Q. Where? A. At Prairie Creek.

Q. That is what they call the school house?

A. No. 4 school house. I was down to Ft. Smith here, and I got the wagon out hauling provisions, groceries, out to the mines, to the men that were working there, and I caught the wagon and rode out, and the next time I saw him
1447 was when I passed in front of the No. 4 school house, going back to the mines.

Q. Did you talk to him then? A. No, sir, nobody spoke.

Q. Did he recognize you?

A. Yes, sir, I suppose so; I had worked for him a long time.

Q. He looked right at you? A. Yes, sir.

Q. And saw you on the wagon?

A. Yes, sir, he was as close as from here to the end of the building.

Q. When was the next time that you saw him?

A. Here at Ft. Smith.

Q. That was later? A. Yes, sir.

Q. But before the big battle, before the property was burned? A. It was before the property was destroyed.

Q. You saw him here where?

A. About the union station.

Q. Over here in Ft. Smith? A. Yes, sir.

Q. Did you talk to him then? A. Yes, sir.

Q Now, tell what was said, as near as you can remember?

A. He walked up to me, and he said to me, he said, "You work out to the Denman-Bache Coal Company, you were the engineer man that was going out that day I was on the train," and I said, "Yes, I suppose I was." He said, "Why is it you are working out there," and I told him that
1448 I had to make a living, that I was in pretty bad shape, my wife being down sick, and I had to. He said, "The union will take care of you," and I said to him "I don't think the union can take care of themselves, they never did." He says "This is no outlaw strike," he says "The district and national is behind it, and the Bache-Denman Coal Company is not going to work, they are already broke," and he says, "This will follow you to your grave."

Q. That is all you remember of that conversation?

A. Yes, sir, that is all that I remember, that is as close as I can give it, it has been a long time back, but that is as close as I can give it.

**Mr. Drinker: You may examine.**

Cross-Examination

By Mr. Warrum:

Q. Where is Tom King now? A. I don't know.

Q. Oh, you know he is dead, don't you?

A. No, I don't, I have not been here for about seven or eight years.

Q. Has anyone told you he is dead? A. No, sir.

Q. You never heard that before? A. No, sir.

Q. Now, the Union Station here, what time of the year was that that you had the talk with Tom King?

A. Well, that was in 1914, I can't tell you just what
1449 date, nor what month, but it was in April or May.

Q. In April or May?

A. Yes, sir, as well as I remember, it might have been June, I can't say positively just what month that was.

Q. Was it in June?

A. No, I can't say just what month.

Q. Will you say it was or was not in June?

A. I can't say.

Q. You don't want to fix it as April or May, it might have been June?

A. It was in 1914, and was somewhere between April, May, June and I might say July.

Q. You don't remember anything else he said in that conversation? A. No, I don't.

Q. Why? A. Why?

Q. Yes.

A. Well, if he said anything else I have forgot it, and it has been quite a while back.

Q. When was this particular statement that you have testified to now, first recalled to your mind.

A. When was it first called to my memory.

Q. Yes?

A. Well, the statement, I don't know the gentleman that I made that statement to, but he came and got my statement some time back.

Q. How long back?

1450 A. I can't say.

Q. Where was it that he came and got your statement?

A. At Drumwright.

Q. Is that in Oklahoma or Arkansas? A. Oklahoma.

Q. You don't know who it was that came and got your statement? A. No, sir.

Q. Or how long ago it was? A. No, sir.

Q. Do you remember what he said to you?

A. He asked me if I ever worked for the Denman-Bache Coal Company, and I told him yes, and he asked me what taken place, and I told him, and made the statement as near as I could recollect of what taken place.

Q. Did you volunteer the statement about Tom King's conversation at the Union Station, or did he suggest that?

A. He came up and asked me why I was working, he asked me, —

Mr. Warrum: Just answer the question.

A. What was the question?

(Question read by the reporter.)

A. I volunteered and told him.

Q. He didn't tell you he would like you to testify that Tom King made that statment? A. No, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

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1451 EWELL DOUGHIT, of lawful age, called as a witness on behalf of plaintiffs being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. You are the brother of Mike Doughit? A. Yes, sir.

Q. Who just testified here this morning? A. Yes, sir.

Q. Were you employed by the Bache-Denman Coal Company in the spring of 1914? A. Yes, sir.

Q. What were you engaged to do?

A. Well, I was working at different jobs, the first thing I done when I was down there I believe, was firing.

Q. Did you do any other type of work?

A. Yes, sir, after they got the mine kind of cleaned up, when they went under the ground, I went under ground.

Q. You started digging coal?

A. Well, yes, sir, loading coal, you might say.

Q. Loading coal? A. Yes, sir.

Q. Prior to starting loading coal, did you do any guard duty any time, around the mine.

A. I believe that I guarded two half shifts, if I remember.

Q. Did you have any trouble when you were going down to the mine on the train on or about June 15th?

A. Yes, sir.

1452 Q. Now, your brother has testified as to that, but will you just state briefly what occurred?

A. Well, the first trip we went down there, I don't remember just exactly the date of it, but the first trip I made down there, there were men got on the train, I believe at Midland, and there had been a ball game, or something, and they had their ball bats and gloves, like they had been to a ball game and they were talking and going on down the road, and said they were going to not let us get off the train.

Q. Did they make any threats with these base ball bats?

A. As I went out the door of the train someone struck at me with a bat, as I went out the door.

Q. Do you remember who it was?

A. Well, I thought it was Robinson.

Q. Sandy Robinson?

A. Yes, sir, that is what they called him. I was not personally acquainted with him.

Q. He was there in that crowd at the time? A. Yes, sir.

Q. You know Clint Burris?

A. Yes, sir, I do know him.

Q. Was he present at that time?

A. Yes, sir, I believe he was.

Q. Now, Mr. Doughit, coming down to the day of the battle, will you describe what happened on that day,—what time did the battle begin, as you recall?

A. Well, it commenced that morning, along about, be-

1453 fore daybreak, sometime, I don't know just what time, something like three or four o'clock maybe, and there were several shots fired and they quit. Then after, along somewhere around 7 o'clock, or a little later, after this train that runs from Hartford, or did then run from Hartford up here to Ft. Smith, after it run, then the main battle commenced.

Q. Was there much shooting at that time?

A. I thought so, yes, sir.

Q. Will you describe when you left the mine, and what occurred; just go ahead in your own way and tell what happened?

A. We stayed around the mines there, I don't know just how long, quite a little while and my brother came to me, and told me "Let's get away from here," and so we went through the woods.

Q. Who went with you, who was in the party?

A. There was quite a little bunch I think; there was me and my brother and my brother-in-law.

Q. What was his name? A. Baskins.
Q. John Baskin?
A. Yes, sir, and a fellow by the name of Thomas and two or three more I don't know.
Q. Do you remember Earl Syllsberry?
A. There was a Syllsberry, yes, sir.
Q. He left with you? A. Yes, sir.
Q. All right, will you go on and describe where you all went?

A. We went on through those woods, I don't know
1454 the directions down there, but it was toward the creek, and there were bullets sailing in the air through those woods around there, and so we stopped a little while there at the edge of the woods. Finally we just decided to go on through, and we had a cotton patch to go across and so we started across this cotton patch, and there was a branch, I don't know just how far, but anyway across the cotton patch was a branch in the woods like, a kind of a thicket like, and we got pretty close to this branch, and there was a bunch of men, four or five came up and told us to throw up our hands. We walked on out, and some of the boys there had guns, and they took the guns off of them, those that had them, and took us over to the school house, I reckon that is what it was, some building over there, and turned us over to the officers.

Q. Who were the officers that they turned you over to?
A. Well, one of them was Slankard, his name, I believe, was Jim Slankard.
Q. Who was the other one?
A. I don't know, I didn't know right then, but I later heard his name was Trout.
Q. All right, continue?
A. We sat around there for quite a bit, just sitting around there on the ground, and after a bit they took us back down the branch a little piece to a little log hut, just a small building, and put us in there and kept us there for some little bit, and after a while Slankard came up and told us to come on and go with him, he would take us over to Hartford. I don't

know what he was taking us over there for, I don't
1455 remember, he might have said, but I don't remember.

Anyway, as they came out of this house, why, my brother in law, Baskins, he was in ahead,—I believe he was the first one out, and then me and Syllsberry were the next ones. As we walked out and turned, just turned the corner to our right, there was a man standing off something like I guess, as far as from here to the wall over there, and he shot

Syllsberry. I don't remember, it has been nine years ago, but anyway he shot Syllsberry three times, and I can't say for sure whether he shot him twice before he shot Baskins or not, but anyway he shot him three times, and Baskins once. Well, I went back in the house, and told my brother that John was killed, that is, Baskins, and he looked out a crack of the house and seen him lying out there. We went out of the house then and there was some man there, I don't know who he was, I never did hear who he was, but he told us, he says, "You boys better get away from here," because he says, "That man is liable to kill every one of you." He was at that time standing, I believe, with his gun on Thomas, on Sam Thomas, and we went on. We had the house between us and him, and me and my brother and two more boys, I believe it was, we started through the woods, and we got out through the woods quite a little ways and Thomas came on and caught up with us. So, that was about the end of it.

Q. Do you know Charles Blackburn?

A. Yes, sir, I have seen him.

Q. Do you remember seeing him in that crowd that day?

A. Yes, sir, I believe he was in the crowd that we run into over on the branch, that captured us.

1456 Q. Do you know Valentine Borillo? A. Yes, sir.

Q. Was he there that day?

A. Yes, sir, he was there on the bank, sitting up on the [bak] when this killing was done.

Q. What was his nationality, do you remember?

A. He was a Mexican, that is what I took him to be.

Q. How many men would you say were there approximately, when this man did the shooting?

A. Quite a crowd, maybe a hundred or two hundred.

Q. Were they armed, most of them? A. Yes, sir.

Q. Did you see Slankard make any attempt to arrest the men that day, that did the shooting?

A. No, sir, if I did I don't remember.

Mr. Lucas: You may cross-examine.

Mr. Warrum: No questions.

The Court: Stand down.

(Witnesses excused).

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EDWARD PARRISH, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Just give your name to the reporter?

A. Edward Parrish.

Q. Where do you live?

A. At present at Dierks, Arkansas.

1457 Q. What is your occupation?

A. Superintendent of schools there.

Q. Superintendent of schools at Dierks? A. Yes, sir.

Q. Are you a graduate of any university or school?

A. Yes, sir, of the University of Arkansas.

Q. Have you been teaching school since you graduated?

A. I taught in the University when I was doing my post-graduate work, and have been teaching since.

Q. Where is your home originally? A. Mena, Arkansas.

Q. Were you living there during 1914? A. Yes, sir.

Q. Were you attending high school at that time?

A. Yes, sir.

Q. During the vacation period in 1914, did you go down to work for the Bache-Denman Coal Company?

A. Yes, sir, late in the summer.

Q. About what time of the year, do you remember?

A. I remember very vividly the last day I was there, and I was only there two days. I got there one afternoon, and was there the next day and the next morning.

Q. Now, if I told you that the battle took place July 17th. what day did you go there? A. Then it was the 15th.

Q. Did you go from Ft. Smith down?

A. Yes, sir.

1458 Q. Were there other men on the train that day?

A. There was not out of Ft. Smith, there was another man and I were the only passengers.

Q. Will you state what took place in connection with this one other man that was on the train with you?

A. Well, I didn't pay very much attention to him when I got on, but I was not accustomed to riding out on that road, and he looked as if he was drinking, and I saw what looked to be a bottle in his pocket and didn't much like to ride on the train with just one man of that kind and no other in there, and when he got on he started to drinking. He went toward the end of the coach and took a drink a time or two, and gave the conductor a drink, I suppose it was the conductor, he was the only official on the train, and then he asked him something about me, he looked back and nodded toward me and asked him something, and the conductor told him where I was going, he had taken up my ticket. He came back and wanted me to

drink with him, and I would not do it, and he tried to force me to drink, and he was not able to do that, because he was one against one and he didn't urge me any more then, but he said, "You are going to Prairie Creek", and I told him I might stop off there.

Q. If I may interrupt you, did he tell you at the outset he was a union miner?

A. When he asked where I was going he told me who he was, but I have forgotten what his name was, but he said he was a union man, and I think, an officer in the union.

Q. Where did he live?

1459 A. At Prairie Creek.

Q. You can't recall the name?

A. No, I cannot. I think my brother told me when I got off the train, because he stuck his head out and reminded me of something I said, and my brother said, "That is Manick, he said that is one of the officers, that is their leader."

Q. Will you state what he said to you going down on the train?

A. He told me I was going down to Prairie Creek, and I said I might stop off there, and he asked what I was going to do, and I said I had a brother down there, and he said, "Are you going to work down there", and I said, "I don't know, I never have". And he said, "You look like a pretty good boy, and I don't want to see you get into trouble", and I asked what kind of trouble, I had an idea I knew because I had heard of the trouble there before. He said they were going to blow that pit up, and I supposed it was just talk, but it didn't sound good to me, and he said he didn't want to see me get hurt, and asked me not to go to Prairie Creek, that him and the union would take care of me, and he wanted me to go back. I told him I didn't have money enough to go back, and he said, "We will get you a ticket to go back, and he started to tell me what they were going to do. He said, "We have plenty of guns and ammunition, and we have seven hundred men coming from Oklahoma to help us", and he said, "This is their fight as well as ours." That didn't sound good to me, and I decided not to get off, and he asked me to get my brother out of there, and he said they were not going to send any scab coal out of there, and he asked me to get my brother,

1460 and that they would give us tickets wherever we wanted to go. I told him that I would, and by this time we had reached Greenwood, and a number of other men got on the train, and I didn't like the looks of the whole crowd, it looked like they had a ball game, or was fixing to have one, and I began to agree with everything he said. He told two or three of the other fellows, they began to ask questions, and it didn't

look like I belonged in their crowd, and they asked who I was, and if I was scab miner, and he said, "No, he is just a kid, he don't know what he is getting into", and he told them what he had told me, and what I had halfway promised to do. They stood around there and didn't look very kindly toward me, and tried to get me to drink again, and one was drunker than the one that had been talking to me, and he was going to force me to drink, and one of the other men told him not to force me if I didn't want to. He turned around and said to go to Prairie Creek with him then and I said, no, I was going to try to get my brother to come on up, and he said, "You come on up to night, because we are going to blow that up tomorrow night; we are coming up tomorrow night," and that is the night they did come up. He said, "We have men coming to help us, and as soon as they get here and everything is set we are coming in." I believed it, and I was ready to get out, and my brother knew I was coming, I had wired him, and he was going to meet me. The train, as I understand it, did not usually stop at the switch, unless they had freight for the mine, and brother did not think it would stop, and he had started up town to meet me at the station, and as soon as he saw the train was stopping on the switch, he ran down there, but
1461 didn't get down there before the train stopped. I supposed it stayed there five minutes, there were something like ten or fifteen men on the train, and this fellow talking to me was on the outside of the seat, and he didn't make any move to let me out, he had his feet propped up on the seat in front of him, and he didn't make any move and I didn't want to ask him to let me out. I supposed he would get more antagonistic than ever, and I sat there. Directly my brother came along looking for me, and he said, "What are you doing in there, get out of there," and I started to get out and he climbed up on the rods, and looked in the window and said, "Get your feet down, let a fellow out, have you no manners". I got up and started out the door and a fellow that was in the door didn't get out of the way to let me out, and my brother came up on the platform, and said, "Let him out", and they did it. I don't know whether they thought they had to or not, but they let me out and I thought some of the fellows would plant one of the sticks they were carrying, in the back of my head, but they did not. When I got off the train that fellow stuck his head out of the window and says, "Remember what you told me about coming up", and I told him all right. My brother said, "That is one of the leaders. He rides up and down on the train trying to scare people off." I told him what he had told me about coming in the next night,

and he said they have been telling that every day, there is nothing to it, it is all wind, they have tried to come down here a day or two. I went on out and walked around, and the next day, I didn't do anything that day,—

1462 Q. Did he say anything as to why the whole union was concerned in this thing?

A. He said it was Oklahoma's job as much as it was theirs, because if Arkansas could work mines with scabs all of the rest of them could, and he said, you have nobody to keep and I have a family.

Q. Did he say anything about not wanting to kill the men in there?

A. He said some of them were traitors to the union, but he didn't like to kill boys, and didn't want to see them get into trouble, and he wanted me to come up and get out of it, and bring my brother out.

Q. Did he say whether they had got any of the men so far?

A. Yes, sir, he said they had got some and would get the rest if they got into a mess of that sort it was their own fault, but he didn't want to see me in there, that I looked kind of innocent, and he didn't want to see me get in trouble.

Q. Did you start to work at the mine?

A. I hung around the next day and worked a little, worked with the electrician, and they had No. 4 tipple, where they were hauling out coal, I was not doing any work, I was standing around there.

Q. Did you do any guard duty when you were there?

A. The night that I worked around the tipple was the night they cut the light wires, in the night, after midnight, I don't know what time and there was some shooting going on in the camp, some bullets come around pretty close to my tent. I got close to the ground, as close as I could, and didn't sleep any more that night, and the next morning the cooks were

1463 all gone, and we didn't get much breakfast, and I went on guard duty that morning.

Q. At what place?

A. At No. 3 tipple, with my brother, he had been there before on guard duty.

Q. Just describe what happened when you took up your post at No. 3 tipple?

A. No. 3 tipple, as I understand it, is south of No. 4 tipple, the best I get the directions.

Q. About how far away?

A. About a quarter of a mile, about that far, and it is on a hill, the ground at No. 4, and he got up on the tipple, which is rather high, and you can see all around over the country, ex-

cept back in the woods. We got up on the tipple and the first thing he did was to take a look around over the country. I didn't know much about what would be going on and he said, "I wonder what they are doing down at Frogtown". I said, "Where is Frogtown". He said "Down there at Prairie Creek", and he showed me, and there was quite a little activity down there, it looked like hand cars coming up and carrying something into a building, and others coming up, and there were men coming up the road that didn't have anything,—

Q. How many men coming down the road?

A. Quite a bunch, forty or fifty around the buildings there, and they were carrying this stuff in, and we were watching, and I just noticed up the road, the road that leads southwest of tipple No. 3, and I noticed two or three

1464 men running across there, a bunch of them, it looked to me like a bunch of quail running across. They were all stooped over, and I expect there were fifteen or twenty came across there.

1465 Q. Did they have any arms? A. No, sir.

Q. Where did they go?

A. Well, I saw men coming out of the woods. I stood at the side, after you leave the corner, close to the road before you go down to Frogtown, and I saw about the same number I saw across the road go into Frogtown, and in about 15 or 20 minutes I saw men crossing back over, and as they crossed back each one had a rifle, and as they came along there they bunched up, didn't go across the road, bunched up and started down where I was.

Q. Continue and state what occurred.

A. As soon as my brother saw them coming down there he said, "You stay here and watch and see what they do, and I will go on down to No. 4 and tell them they are coming. They are headed to the mines now." He went on down there, and he didn't get very far until they saw me. I had on a pair of overalls and a white shirt, and I guess it was rather conspicuous on the tipple. Some fellow shot up in there, I thought probably his gun went off accidentally. I thought such accidents might be dangerous, and I started to get down. A bullet struck a six by six over my head, and I went down the stairs several at a time and got out behind the dump. There was a large dump there, 12 or 15 feet high, between that and the road, and I got out in the open field and started out across what used to be an old field, and I met another fellow coming down from No. 4. He said, "Let us go over to the camp and get the women, and bring them down to the

mine." I don't know what camp it was, but it was
1466 over on the hill a little north and east of No. 3 tipple. We started out across there, and we didn't get any more than half way across until we was in plain view of them down there, and they commenced shooting. They commenced shooting at us again, and it didn't take us long to get over there. The women were considerably excited. Some of the men said to take them down to the fan house. I didn't know where that was. They took them down there, and we went on down to No. 4.

When we got there, I don't know, there were 30 or 40 men down there and there was shooting going on there all the time. I got in there, and Leo Schell seemed to be sort of in charge. I understood he was a deputy United States marshal. There was a line of coal cars that ran from the tipple down there, I don't know, six or eight cars down to the north. There was scales or something down there, some building, I suppose it was a scales. The track ran right up against the structure, whatever it was. They were back behind these cars, and the Union Hall, as they called it, was out in front. I supposed they were trying to protect themselves behind these cars, but Schell had gone out two or three times to the tipple, and there seemed to be a space there about a car length at the end of the string of cars between the end of the string of cars and the tipple. As he came back about the third time there was a shot fired, and he jumped back in and he didn't go out any more, just stayed behind that. One of the boys said he wondered how good marksmen they were, and he put his hat on top of a car of coal, and it got a hole through it. He didn't want to put it on his head and put it up that high.

1467 There were four of us. Harmon and a fellow named Malloy, and my brother and I, got in under the cars, a string of wooden cars, and there was a dump there, something like as high as this desk, or maybe hardly so high, on each side of the track. We climbed down in there and those men were down towards the Union Hall, and they stood there and it seemed like they were looking for us. We were behind the wheels of the cars, and we had a good deep hole and wasn't in so much danger. Accidentally or some other way they put a bullet in under there, and it struck the car wheel and the rust and stuff flew up in my eyes, and I thought I was shot. When I woke up and found I wasn't in any danger, I got further back behind the wheel. We was in under there until I would say 10 or 11 o'clock. I know we stayed under there a long time. It seemed to me like it was a week. We

finally decided to come out. We didn't hear any more talk or anything. Some other men had gone along behind the dump there. We came out and didn't see anybody. My brother went over to the tipple and didn't find anybody over there. Every once in awhile we would hear a bullet hit the metal covering around the tipple. He came back and said they were all gone. We decided we would evacuate then.

We started out north. I think the direction was north. Anyway, it was the general direction the road run, out through the woods there. We went along until we got into a thicket off the road, not more than 20 or 30 feet. We went as far as
1468 the thicket went, until it opened out into a cotton patch, or something. We supposed they were hid in that thicket. One of the boys said, "As soon as they find out everybody is gone they will all go in there, and we can get out without meeting any of them." We laid down in the thicket.

One man came across that cotton patch. We could see him as he climbed over the fence and started up the road, and he met another one in front of us, not more than 20 feet. There was quite an open space there. We were afraid they would look around and see us. They stopped there, and two other men came up the road, in the general direction of north, going toward the mine, and the four stopped there and held a conversation. They wanted to know if they were all gone. One of the fellows that come up there said, "Are they all gone? Have they all gone in?" Another fellow said, "The scabs are all out." This man said, "Did you get any of them?" I didn't hear what he said, whether he said they got any of them or not. He said, "What are you going to do?" The other fellow, "They are going to burn it up." It wasn't but a little while after that—they talked a few minutes while I was lying there, and I thought they could hear my heart beating down in the weeds. It wasn't but a little while till they went on up toward the mine, and as soon as they went on we could hear shooting and shouting from all directions. I supposed they were all coming in from the hill.

It seemed to indicate to me that they were gone, and we went out through the field as far as it lasted, until it opened up into the road, and we got in the road and started toward Fort
1469 Smith. We got to a road there that I understood branched off toward Midland and Fort Smith, and the other one branched off toward Mansfield. There was an argument there as to which way we should go. Some of the boys wanted to go on to Fort Smith and walk, and some

of the others, Malloy, I think, argued in favor of going to Mansfield. He said we could get on a train there and go to Fort Smith. He finally prevailed on the others to go with him to Mansfield, and when we got down there—

Q. Let me interrupt you. Before you got over to Mansfield, after hearing that conversation about their intention to fire the mines, did you see any property being burned up?

A. I saw smoke and flames rising from where I knew to be the mines. They were the only buildings there, and we were not more than three or four hundred yards from it.

Q. How soon after these men went up onto the mine property did you see the smoke?

A. They didn't much more than have time to get up there until the smoke began to rise. It wasn't very large for a few minutes. There was a whole lot of shooting as soon as the smoke began to go up. I suppose they were enthusiastic about it and began firing their guns again.

Q. Were these men armed that stood in the road and held that conversation? A. Yes, sir, they all had rifles.

Q. Just describe what happened over at Mansfield.

A. We got into Mansfield about six o'clock, I think. Some of the boys had a watch, either Harmon or Malloy. I know I didn't have one, and I know my brother didn't. It was
1470 about 6 o'clock, and they said the train came through there about 8 going to Fort Smith. Harmon didn't want to go into town until about train time. Malloy said, "Everything is all right up here. These folks are not cutthroats." Harmon said, "They may not be, but I would just as soon have my throat cut as to be knocked on the head." He tried to get them to wait until dark. But Malloy seemed to be the leader, and he said he was hungry and wanted something to eat.

We went on up to the station, and we had, I guess, nearly all of the four had guns. I think there were four rifles in our crowd. There were not any of them loaded, because we didn't have any ammunition. We expressed those to Fort Smith. There was a man there that seemed to be ticket agent and express agent and everything else. He had a boy who made out the receipts. I don't know whether it was his boy or not. He gave us a receipt for them.

Q. Did they think you were union men?

A. Yes, sir. I think we tried to leave the impression with them that we were, because we didn't feel any too safe about it. As soon as he understood or got the impression we were

union men, he began to let us know how he felt about it, and began bemeaning the scabs.

I waited for him to give us the receipts, and Harmon and Malloy went on up to get something to eat. They said, "You fellows stay down here, and we will get something to eat." They went up town. I didn't know where up town was there, because it was rather exciting. We stood around and
1471 waited, and walked up the street a little ways and came back, and when we came back the agent came out and said, "Are you fellows union miners?" He said, "I don't believe you are." I wouldn't say anything. I thought it would be just as safe not to say anything as to say I wasn't. He said, "You are going to get into trouble here. This is pretty hot here for people who are not union miners."

About that time there were several men came around there. I didn't know what they were coming for. Some of them were young fellows, and some of them were not quite so young. One end of the station didn't have any windows. It was a brick station, and we were standing around there up against that wall, I thought it would be safer to have them all on one side of us, if they meant any mischief. So I backed up against the wall.

So while they were arguing there, some man came up there from town. I suppose he came from up town. He came from where the thickly populated section seemed to be. He said, "Where are you fellows from?" I told him where my home was. I was from there. I wished I had been there. He said, "I am an officer." I said, "Well, that is nice. I am glad to see you. I have been wishing one would come." He said, "I want to search you." I said, "Go to it." I wasn't much afraid while there was an officer there. I thought the officers usually protected everybody, that needed protection, at least.

So he wouldn't touch us. He wouldn't try to search us. He said, "If you have any guns, I want them," I said, "Well, if we have got any, get them." He stood there and wouldn't take hold of us. Finally he did go through my pockets
1472 and took my knife and what little money I had. He turned around to my brother, and he was a little larger than I was, a little over six feet and a pretty good sized man. He said, "Have you got any guns?" My brother said, "Look and see. You say you are an officer." He wouldn't look. Finally he said, "If you have any gun, you give it to me. I am an officer. I will protect you and see that you don't get into any trouble." My brother said, "Well, search me. You

are an officer." So he went through his pockets. I don't know whether he had a knife or not. He had a little money, and he took that, took everything we had in our pockets. He found this receipt I had for the rifles and he took that.

He turned around and stepped back in the crowd, and by that time there were 20 or 25 men around there. They came up there, and I was trying to watch both sides at once, for I knew something was going to break loose pretty soon. I didn't know what it was going to be.

Q. Mr. Parrish, let me interrupt you a moment. I wish you would try and talk a little slower, for we want the reporter to be sure and get all of this.

A. All right. Two or three of them had sticks. One of them standing close to me, and he had a piece of a strip, looked like it came from a sawmill, a rough piece about two and a half feet long and two inches wide and an inch thick. I thought it looked like it might do some damage if it came in contact with me.

Mr. Warrum: If the court please, I don't like to interrupt, but almost all this testimony is not an answer to spe-
1473 cific questions, and consists of impressions and suppositions on the part of the witness. If he would state what happened instead of his opinions—

The Court: Very well. Proceed.

Mr. Warrum: I think it is all immaterial, what happened there.

The Court: Proceed. Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Just state what the crowd did then.

A. We had been around there for some little time, and they kept crowding around. Finally one of them said something to me, that was on my right, and I glanced over there, just out of the corner of my eye, and I caught that piece of wood coming down on top of my head. Then some fellow hit me in the jaw. I saw him draw his hand out of his pocket and hit me with some brass knucks. I couldn't fall, because they were so close to me, but I went down. I saw one of them hit my brother at the same time that I fell. One of them kicked him in the head, and when he kicked him in the head I got up, and one of them knocked me down again, and they walked all over me, and the station agent came out and told them,

"Don't kill them." He said, "You fellows go on off now and" —he said do something, I don't remember all he did say. I remember he told them not to kill them, because that is what I thought they were going to do.

Then he took us in and said, "You had better beat it out of town, or they will come down here and get you." Some boy came in and said, they were coming back
1474 down, and he said, "They are going to kill you." He told us to leave town, and we started down the track and crawled in a box car. The brakeman saw us there, and he come along and said, "No scabs can ride on this train. Get off." He put us off, and we started up the road to Fort Smith. I don't know the direction, but it seemed to me it was north then. We walked nearly all night. It was getting daylight, and we laid down by the side of the road and slept until the sun was up, and we came on, and we met groups of men along the road, and they would look at us like they wondered who we were, but they didn't interfere with us personally. I hadn't had anything to eat. I hadn't had anything the day before, since noon. We got in here about two o'clock in the afternoon.

Q. Here at Fort Smith?

A. Yes, sir.

Q. Did you walk all the way?

A. Yes, sir.

Q. Now, Mr. Parrish, going back to the situation at the mine, how many cars were there? Can you give an approximation?

A. Well, I don't know exactly how many, but judging by the length of the string of cars—I know there was four or five, but I don't know whether there were more or not.

Q. Were they loaded? A. Those were loaded.

Q. Those were loaded cars?

A. Yes, sir. I remember the coal flying off occasionally.

Q. Where the men were hid, they could not be seen by the miners? A. No, sir.

1475 Q. When you left were those cars all right?

A. Yes, sir.

Q. Were any of them on fire? A. No, sir.

Q. Are you positive of that?

A. Not unless it was from a bullet.

Q. Were any of them on fire from a bullet?

A. No, sir. I saw no smoke.

Q. Were they hoisting coal on the 16th, the day you were there? A. Yes, sir.

Q. They loaded the coal in those cars you have spoken of?

A. Yes, sir. That is what I was helping to do on the 16th.

Mr. Lucas: Cross-examine.

Mr. Warrum: No cross-examination.

The Court: Stand down.

(Witness excused.)

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H. E. MORGAN, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Did I give you a copy of your testimony at the previous trial? A. You did.

Q. Do you have it with you?

A. No, sir. I left it laying right there.

Q. You looked it over to refresh your memory?

A. Yes, sir.

1476 Q. Will you please state your full name to the reporter?

A. H. E. Morgan.

Q. What is your occupation?

A. Traveling salesman.

Q. By what company are you employed?

A. Atkinson-Williams Hardware Company.

Q. Where are they located?

A. Fourth and Rogers, Fort Smith, Arkansas.

Q. Were you employed by them in 1914 as traveling salesman? A. I was.

Q. Do you remember a certain order given you by Fred W. Holt, secretary of the United Mine Workers of America, District 21? A. I do.

Q. Will you state to the court and jury what Mr. Holt said to you in regard to those orders; what were they orders for? A. For guns and ammunition.

Q. What did Mr. Holt say to you when he placed the orders? Just describe that.

A. As well as I remember, Fred asked me if I could tell him how many guns we had in stock of different kinds, and I told him I couldn't off hand; that I would have to call the firm over long distance and find out just exactly what we had on hand. He asked me if I would do that, and I told him I would. I went to the long distance telephone exchange and

called the firm and ascertained just how many they had in stock, and went back and advised him.

Q. Did he order those guns that were in stock?

1477 A. He did.

Q. Did he order the ammunition to be used in connection with them?

A. That is my impression. I don't remember exactly the circumstances. I think, though, he gave me an order for some ammunition at that time.

Q. Do you recall just when that was, approximately?

A. It was just prior, a short time prior to the trouble they had at Prairie Creek. I don't recall the exact time but it was a short time prior to that.

Q. Did he say where he wanted those guns shipped?

A. I am not sure. My impression was he wanted them shipped to Hartford. I am not sure about that.

Q. Hartford, Arkansas? A. Yes, sir.

Q. Did he ask you anything about the possibility of shipping them in plain boxes?

A. Yes, sir. He suggested that if that could be done, and I told him I didn't know whether it could or not, owing to the interstate laws, whether we could ship in plain boxes or not.

Q. Did you get another order from Mr. Holt that same day? A. I did.

Q. What was the nature of that order?

A. That was a factory shipment.

Q. What number of guns did he order? A. A case.

Q. How many are in a case? A. 10.

1478 Q. Ten? A. Yes, sir.

Q. What did you do with that order?

A. As I recall, Mr. Hill at that time was the manufacturer's representative, and he was at McAlester, happened to be there that day, and I gave him the order and asked him if he wouldn't wire that to the factory.

Q. What is Mr. Hill's full name?

A. H. B. Hill, Harry B. Hill.

Q. What company was he representing?

A. The Remington Arms & Ammunition.

Q. Was that shipment made direct from the factory?

A. It was.

Q. Was there a third order, Mr. Morgan?

A. There was not at that time. I think about a week later, when I was out there, I think there was an order.

Q. Describe that order, please.

A. That was for a case of guns. I am not sure it was the same size, the same caliber or what. It may have been a different model, but it was an order for some more guns.

Q. Where did he want the last two orders you have spoken of shipped?

A. I think they were shipped to Hartford. I am not sure. I think both orders were shipped to Hartford.

Q. Did he request that to be sent by express?

A. Yes, sir.

Q. Do you remember to whom they were to be shipped, the name of the parties to whom they were to be shipped?

1479 A. I am not sure. It may have been John Mastell or possibly Oscar Layton. I am not sure.

Q. Mr. Morgan, I show you what appears to be an order. The heading of it is "Atkinson-Williams Hardware Company, Fort Smith, Arkansas." The salesman is shown as H. E. Morgan. The date is June 10th, 1914. I will ask you whether you are familiar with that order? A. Yes, sir, I am.

Q. In whose handwriting is it? A. My own.

Q. Is that the order that you have just described as the first order that Mr. Holt placed?

A. No, sir, that is the second one. The first one was for the guns we had in stock. I believe I phoned that order, and later took this one. That was later on in the day.

Q. I will then show you another one of the same date and of the same character, and ask you if this one covers the first order that he placed with you?

A. Yes, sir. That is the phone order. That is the one I had reference to first. That is the first one. That was the stock order.

Q. For all the guns that were in stock?

A. Yes, sir.

Q. At Fort Smith? A. Yes, sir.

Q. Is that in your handwriting?

1480 A. No, sir. That was just a phone order. I phoned that in. Now, I don't know, it seems to me—that was someone in the office that wrote it up. They put my name in there showing that I was the one that phoned the order.

Mr. Lucas: I ask to have the order he has just referred to marked for identification.

(Said document was thereupon marked by the reporter "Plaintiffs' Exhibit No. 14, October 20, 1923.")

Mr. Lucas: I ask that the second order on that day be marked for identification.

(Said order was thereupon marked by the reporter "Plaintiffs' Exhibit No. 15, October 20, 1923.")

Q. I now hand you a similar order, the date of which is June 17, 1914. Does that order cover the third shipment?
A. Yes, sir.
Q. Is that in your handwriting?
A. Yes, sir.

Mr. Lucas: I ask that this last order referred to be marked for identification.

(Said order was thereupon marked by the reporter "Plaintiffs' Exhibit No. 16, October 20, 1923.")

Q. Mr. Morgan, to whom were these goods to be shipped, as shown by these invoices?
A. The first order was shipped to John Mastell. No. Yes. The first order that I phoned in, that was shipped to John Mastell at Prairie Creek. The second order was the factory shipment. That was shipped to John Mastell at Prairie
1481 Creek. That was the case. The third order was sold to John Mastell at Prairie Creek, and shipped to Oscar Layton at Hartford.
Q. Who was John Mastell?
A. A merchant at Prairie Creek, a regular customer I sold goods to all the time.
Q. Was there an understanding between you and Mr. Holt as to getting these orders through John Mastell?
A. Yes, sir.
Q. How were these orders paid for?
A. By check, as well as I remember, check or draft, I am not sure.
Q. Who tendered you the check in payment?
A. Mr. Holt.
Q. Do you recall approximately the amount of the first order, what the total was?
A. I am not sure, but I think around $230. I am not sure of that.
Q. I hand you check No. 726, United Mine Workers of America, District No. 21, and ask you whether that check was received by you in payment of either of these orders you have spoken of?
A. No, sir, that one was not. I never had anything to do with that at all.
Q. I beg your pardon. I handed you the wrong check.
A. Yes, sir.

Q. I hand you check No. 729, dated June 30th, 1914, for $355.68.

A. Yes, sir, that was the first check. That is $355.68.

Q. Did you receive that check?

A. Yes, sir.

Q. Is it endorsed by you?

1482 A. Yes, sir.

Q. And it was in payment for some of the goods you have just described? A. Yes, sir.

Mr. Warrum: Was that an exhibit at the other trial?

Mr. Lucas: Yes, formerly Exhibit No. 55.

Q. Did you have a subsequent conversation with Mr. Holt regarding some of these guns that he received, or that were received?

A. I had two or three conversations with him. I don't know just exactly which one you refer to.

Q. Did you have a conversation with him a little bit before the battle of July 17th? A. I did.

Q. What was said then, very briefly?

A. I really don't recall just the particular conversation you have reference to. I talked with him two or three different times.

Q. Did he say anything about some of the guns having been spilled out on the sidewalk?

A. Yes, sir, I remember that.

Q. State what that was.

A. That was at McAlester, and it seemed that the guns had been shipped up to McAlester in his absence, and was taken by draymen up to their office in the Arnold Building. I believe he said there was no one in the office but the girls, and that the case had been broken open in shipment and the guns were exposed to the view of passers by on the

1483 sidewalk, and part of the ammunition spilled out on the sidewalk.

Mr. Lucas: If the court please, we offer in evidence as an exhibit the check No. 729, which Mr. Morgan had identified, and which the reporter has marked "Plaintiffs' Exhibit No. 17."

(Which said plaintiffs' Exhibit No. 17 is in the words and figures following, to-wit:)

United Mine Workers of America, District 21
Fred W. Holt, Secretary-Treasurer.
(United Mine Workers of America One and Indissoluble District 21 Organized Oct. 8, 1898)

No. 729
(Union Label)

McAlester, Okla. June 30 1914

Oklahoma State Bank
Paid
June 30 1914
McAlester, Okla.

Pay to the order of

Cash $355.68

Three Hundred fifty five 68/100 Dollars

To Oklahoma State Bank
McAlester, Okla.

UNITED MINE WORKERS OF AMERICA DISTRICT 21
By F W Holt Secretary-Treasurer.

Deposits Guaranteed

Countersigned:
P R Stewart
President

(On reverse side:) H. E. Morgan

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Mr. Lucas: That is all.

Cross-Examination

By Mr. Warrum:

Q. Did you sell Bache-Denman any of the guns they had?

A. No, sir.

Q. You don't know where they got them?

1484 A. No, sir.

Q. The first order was on [Jule] 10th, and the second order was on [Jule] 10th? A. Yes, sir.

Q. And the next order was about a week later?

A. Yes, sir.

Q. And you afterwards had a conversation with Mr. Holt at McAlester? A. Yes, sir.

Q. In which he told you that these guns had been shipped down to Oscar Layton and Mastell, and had all been gathered up and sent back? A. No, I wouldn't say that.

Q. What would you say?

A. He said some guns and some ammunition had been shipped to him at McAlester, and the drayman in hauling them up to his office had put them on the sidewalk. He said there wasn't any one in the office but the girl or girls. That was the stenographer and the typewriter, I suppose. The drayman had laid them on the sidewalk, in front of their office. Their office is up stairs in the Arnold Building.

Q. Are you stating your impression or what he said to you?

A. That is what he said, that they hauled them up there and put them on the sidewalk in front of the office, which is up stairs.

Q. He was talking about the guns you have testified to?

A. Yes, sir. I don't know what part of them. He mentioned the fact that the guns I had sold him had been
1485 taken over there. He didn't say how many and I don't know how many.

Q. He spoke to you about the guns you had sold him?

A. Yes, sir.

Q. They had been collected, whether all or part?

A. Yes, sir.

Q. He was talking about those guns? A. Yes, sir.

Q. He said those had all been collected?

A. No, he didn't say "all".

Q. I beg your pardon. Let's see if I can get it right. He was talking about those guns? A. Yes, sir.

Q. And said they had been collected and sent over to McAlester, and had been put on the sidewalk and the boxes had bursted open, and no body but the girls were there to receive them. Is that it?

A. You express yourself as "all" the guns. He didn't say all the guns had been collected. I don't know whether any of them had been collected. I do know he said there were some guns brought over there and put on the sidewalk by the drayman in front of their office, and there was no one there but the girls, and the box was open and part of the ammunition was scattered over the sidewalk.

Q. Did you understand he was talking about the guns you had sold him? A. Yes, sir, that was my impression.

Mr. Warrum: That is all.

Redirect Examination

1486 **By Mr. Lucas:**

Q. When you received that check from Mr. Fred Holt, how did you transmit that money to your firm at Fort Smith?

A. My impression is I got a cashier's check. I am not just sure. It was a cashier's check or a draft or something, and I mailed it in to the firm, in the usual way.

Q. You got a draft and sent it in to Fort Smith?
A. Yes, sir.

Mr. Lucas: That is all.

The Court: Stand down.

(Witness Excused.)

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JOSEPH A. MCCONNELL, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:
Q. You may state your name.
A. Joseph A. McConnell.
Q. Where do you live? A. Hartford.
Q. Have you lived there for some length of time?
A. Yes, sir, ever since it was a town.
Q. What were you doing there in 1914?
A. Running a hotel.
Q. Try and talk so the last juror over here can hear you.
A. All right.
Q. What hotel were you running?
Grandview.
1487 Q. Where is that hotel situated in Hartford?
A. On Broadway right across the tracks from the Rock Island depot.
Q. Do you remember the night of the big battle at Prairie Creek No. 4? A. Yes, sir.
Q. Do you remember several nights before that? Did you see Jim McNamara? A. Yes, sir.
Q. What was he doing?
A. Well, at this time he was rooming there at my place. That is, he wasn't rooming there regular, either, but he had a room there, and he would be in maybe one or two nights at a time, and then he maybe would be out a few nights, but he put up there at the hotel.
Q. Do you recall his using the telephone very much at the time? A. Yes, sir.
Q. Just describe what he was doing.
A. I really don't recollect now just what the calls would be. I recollect him using the telephone frequently.
Q. Was he using the telephone the day of the battle?
A. I think so, and that night.
Q. Do you mean the night before?
A. During the night. The battle come off in the early part of the morning, I think it was. Let me see. It ended in the

early part of the morning, didn't it? I don't recollect now, it has been so long ago.

Q. He was using the telephone that night and the next morning?

A. Yes, sir. He came in that night something like 3
1488 or 4 o'clock, I think.

Q. Did he make any long distance telephone calls at that time?

A. I couldn't tell where they were. He was using the telephone, but I don't recollect where the calls were.

Q. Do you recall being asked when you testified before as to whether he made any calls for Pete Stewart?

A. I think so.

Q. And your recollection is that he did make such calls?

A. Yes, sir.

Q. After the battle did you hear him say anything about what had happened over at No. 4?

A. I recollect him talking about it, but I don't recollect just what he said about it. He came from Prairie Creek over there after it was over, came back to the hotel.

Q. Did he [saything] about having burned the mines up?

A. Yes, sir, he said the mines was all on fire at that time.

Q. Now, Mr. McConnell, was there any general talk at that time about what was taking place over at the Bache-Denman mine? A. Yes, sir, a right smart of general talk.

Q. Did you hear any talk about the guards from the mines coming over there to Hartford?

A. No, sir, I didn't hear anything about them coming over there, that is, at that time. At the time he come in there the talk was about the mines being blowed up, and they had whipped several people, and the mines was on fire at that time. That is when he came in.

Q. Do you remember the occasion of any of the peo-
1489 ple from Frogtown coming to Hartford?

A. No, sir, not until the next day or such a matter. I believe it was the next day or the second day afterward; the next day, I think it was.

Q. Do you remember any of them coming over there two or three days before the battle?

A. No, sir, I don't recollect now whether they did or not. They was coming in and out several times there, and I can't recollect just whether it was before or after, any more than I know the day after the battle they brought some over there.

Q. Did you see any of the guards from the Bache-Denman mine in the town of Hartford at any time?

A. I don't think I ever did.

Q. Do you remember any occurrence of some men chasing some other men and yelling at them and saying anything about scabs?

A. Yes, sir. There was one night, I believe it was the night of the riot; it was either that or the next night, they placed guards all over the streets there in Hartford. I wouldn't be positive what night that was, but anyway, there was several guards placed around in Hartford, and close to the hotel, right above the hotel on Broadway, there were some parties that run down the street and hollered "Scabs", and after they passed the corner of the hotel there, between that and the railroad, there was two or three shots fired. They were going down toward the railroad station.

Q. Did you see any so called scabs? A. No, sir.

1490 Q. Did you see these men that were causing this disturbance?

A. No, sir, not any more than just people in town. I didn't know who they were.

Q. They were people in the town of Hartford?

A. They was in the town of Hartford. I don't know whether they lived there or not. There was one man that was with them that was renting a room there. He had a clothes cleaning press in my building. He was with them.

Q. What was his name? A. Let me see.

Q. If you don't recollect, he was a resident of Hartford?

A. Yes, sir.

Q. And was in that crowd?

A. He was, yes. I can pretty near call his name, but it has been so long his name is not very fresh in my memory.

Q. Now, Mr. McConnell, with all this talk that was going around, did you have any personal fear that the guards from the Bache-Denman property were coming to town to shoot it up? A. No, sir.

Q. Did you own property in Hartford? A. Yes, sir.

Q. You had a family there? A. Yes, sir.

Q. And you had no personal fear of any such incident as that? A. None whatever.

Mr. Lucas: Cross-examine.

Cross-Examination

1491 By Mr. Warrum:

Q. You testified in the former trial, did you not?

A. Sir?

Q. You testified in the former trial of this case some four years ago? A. I think so. That is several years ago?

Q. Yes. A. Yes.

Q. Do you remember that you were asked this question: "You say the day before they put out a half dozen guards?" And you answered "Yes"? A. A half dozen guards?

Q. The mayor of the town put out some guards?

A. That is the time that in my testimony this time I didn't recollect the date. There was some guards, or some people in the town that was guarding the town at night that this occurrence happened that I just spoke of, but I don't recollect what night that was now.

Q. I asked you the question: "Who put them out?" And you answered, "I don't know who put them out, there was one of the men living in my house, he was a tailor by trade, and he was one of the guards." Is that right?

A. There was a leader of some kind, but I don't recollect.

Q. There were guards put out? Yes, sir.

Q. Why were the guards put out?

A. At the time I didn't know.

1492 Q. Was it because there was some apprehension on account of the shooting over at Frogtown?

A. My understanding is they were looking for them to come over to Hartford that night.

Q. Looking for who?

A. Someone. I didn't know who it was. They was looking for trouble in Hartford and put out guards. I don't recollect who put them out.

Q. Do you know what I mean when I speak of Frogtown?

A. Yes, sir.

Q. It is different from Prairie Creek?

A. Yes, sir. That is a little camp about a mile and a half out, between there and Prairie Creek.

Q. That place had been shot up a few days before the battle of July 17th, had it not?

A. I don't know about that.

Q. Just one other question. You testified that Mr. McNamara had tried to get in telephone communication with Mr. Stewart, Pete Stewart?

A. Yes, sir, I think he called him that day.

Q. Didn't he get in telephone communication with him?

A. I don't know whether he did or not.

Q. You don't know whether he did or not?

A. No, sir. He called, though.

Q. You don't know whether he talked to him or not?

A. He called a time or two.

Mr. Warrum: That is all.

1493 The Court: Stand down.

(Witness Excused.)

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FRANK M. MORGAN, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Give the reporter your full name.

A. Frank M. Morgan.

Q. In the fall of 1914 were you appointed a United States deputy marshal to go to Prairie Creek? A. Yes, sir.

Q. What time did you go down there?

A. I went down right away after I was appointed.

Q. Do you remember what month?

A. December, wasn't it? There is a record of it. December, I think the 19th.

Q. Where were you stationed when you got down there?

A. Prairie Creek.

Q. Under whom were you serving? A. J. H. Parker.

Q. Marshal Parker? A. Marshal Parker.

Q. What were you instructed to do?

A. I was instructed to go down there and see that any of these open shop fellows coming in there, that the union miners didn't jump on them or beat them up, and try to keep down any trouble of that kind.

1494 Q. Do you remember an occasion when there was trouble?

A. Along in January. 1915, I reckon, there began to be a few down there.

Mr. Warrum: If the court please, we desire to object to this testimony. He is asking this witness, who went down there in December, 1914, to testify of some trouble they had down there in January, 1915. This suit was instituted September 1st, 1914.

Mr. Lucas: If the court please, may I state what the purpose is?

The Court: What was the question?

Mr. Lucas: The witness stated he went down there in December, and I asked him if there had been any trouble and he said there had, and was describing some trouble that took

[trouble that took] place in January, 1915, past as stated by Mr. Warrum.

The Court: What is the purpose of it?

Mr. Lucas: The purpose of it is this, your Honor: The property was destroyed in July, 1917, as has been described very fully. This is to show the conspiracy was continuing, and continued for a long time; that in October after this destruction, when they attempted to open up some mines, the attempt was made on the 31st of October to open up the so-called Griffith mine, which was nothing but a little strip pit, and the minute they started that they were jumped on again.

The Court: My dear sir, this is an action to recover damages, and you are limited to the property destroyed at the time the action was commenced.

Mr. Drinker: The amended complaint was filed in 1917.

The Court: That does not matter.

1495 Mr. Drinker: We do not claim damages beyond July.

The Court: I know, but it is an action for damages.

Mr. Drinker: The complaint alleges that the conspiracy continued.

The Court: It does not matter if it did.

Mr. Drinker: It is not important. Let it go.

The Court: You are limited to the time the action was commenced.

Mr. McDonough: I think it is important. It was admitted before.

The Court: I don't care if it was. I am not bound by that.

Mr. McDonough: I mean it was passed on. Here is a conspiracy that kept on, and it is for the purpose of showing the purpose of these people in destroying this property. The United States Court could not stop it, the army could not stop them. Probably that did. That was the only thing. The purpose is to show the force of this conspiracy.

The Court: Oh, well, this is an action to recover damages. What happened after that time is of no concern to us. Stand down.

(Witness Excused.)

(Whereupon, at 11:45 o'clock a. m., after the usual admonition by the court to the jury, an adjournment was taken until Monday, the 22nd day of October, 1923, at 10:00 o'clock a. m.)

1496 Monday, October 22nd, 10:00 A. M.

Pursuant to adjournment at 10:00 o'clock A. M., on Monday, October 22nd, 1923, court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record:

The Court: The Jury are all present. Proceed with the trial.

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Testimony of SAM THOMAS.

Mr. Lucas: We will read the testimony of Sam Thomas as given in the previous trial, contained in the previous record, beginning at 1659. Mr. Thomas is now dead.

(Thereupon the testimony of Sam Thomas was read by Mr. Lucas and Mr. Hardin, as follows:)

"Direct Examination.

"Q. Your full name is Sam Thomas? A. Yes, sir.
Q. Where do you live? A. At Mascot, Tennessee.
Q. How long have you lived there?
A. I moved there in January.
Q. Are you a native of Tennessee, were you born in Tennessee? A. No, sir, I was born in Pennsylvania.
Q. What business are you in?
A. Engineering up there at the American Zinc Company.
Q. Were you employed in 1914 at the Bache-Denman mines in Sebastian County—this county? A. Yes.
1497 Q. Who employed you?
A. Why, Mr. Eustis, was the man that employed me.
Q. What time did you get to this county?
A. I don't just remember the date, it was somewhere in June, along in there, about in the middle or towards the last of June, I don't just remember.
Q. What kind of work did you do when you went to the mine?
A. When I first went to the mine I went to guarding and from that on to firing.
Q. What do you mean by "firing"? A. Firing boilers.
Q. In firing the boilers, did you work day time or night time? A. I worked night time.

Q. Were you working there in July, 1914? A. Yes, sir.
Q. On July 16th, the day before the battle, were you there?
A. Yes, sir.
Q. Were you working there on the night of July 16th, the night between July 16th and July 17th? A. Yes, sir.
Q. What kind of work were you doing then?
A. Firing the boilers.
Q. State whether anything unusual happened during that night, and if so state what it was?
A. Up along between—as near as I could judge—between 12:00 and 1:00 o'clock, why our lights went out on us,—between 12:00 and 1:00 o'clock the lights went out on us.
1498 Q. Were they electric lights? A. Yes, sir.
Q. What was done?
A. Well, I didn't hear of anything more until along in the morning when a volley of shots come in and a torch was lit where I was so that I could see the water columns. I took a torch and lit it and the light had just went out and would be back again so I lit my torches and stuck them up by the water column so I could see my water. And no lights came on no more at all, and along between 3:00 and 4:00 o'clock, as near as I could judge, a volley of shots came in there that seemed to come from back of the boiler room.
Q. What direction was that?
A. They came in from towards that road that leads into Huntington, from the middle of a patch of woods, they seemed to come from that little patch of woods toward the boiler room.
Q. Was that in the direction of Huntington?
A. Yes, in the general direction of Huntington.
Q. That was about what time?
A. That was between 3:00 and 4:00 o'clock in the morning, as near as I can remember.
Q. Could you tell about how many shots were fired at that time? A. Oh, several of them.
Q. Give your best judgment as to the number, if you can give it? A. Probably 100 or more.
Q. Did any of those shots hit in or about the mine?
A. Yes, sir, they flew all around that boiler stack and all around the boiler room above my head and hit the ca-
1499 ble. Several of them hit it, I could not say how many.
Q. What was the next thing that occurred after that?
A. Well, there was nothing more occurred then until between 7:00 and 8:00 o'clock, that I remember of at all.
Q. What took place then?

A. I was sitting in the store down there and Mr. Moore come in.

Q. What Mr. Moore was that? What was his first name?

A. Buster, I believe.

Q. Buster Moore? A. Yes.

Q. He was superintendent there at the time?

A. Yes.

Q. Well, what occurred then?

A. I was sitting there in the store and he came in and as soon as he came in I said to him, "What is the matter", and by that time several shots came in from towards the school house, and I didn't need to ask him any more what the trouble was because I already knowed. Several shots came in from the school house, brobably 300 or 400 or 600 of them, just like a hail storm coming in there.

Q. Where did the bullets hit, if you know?

A. All over the place, some hit the tipple and some hit around the cars, and from there into this boiler room, from that on towards this way (indicating).

Q. Then what was done?

A. Why, we all got guns—what guns we had and got in the clear where we could keep ourselves out of the road of
1500 them, and they commenced firing in on us, and of course we returned it.

Q. How long did you stay there?

A. I judge it was along about dinner time when I left.

Q. Who went away with you, if anybody?

A. There was Earl Sylesberry, John Baskins and a fellow by the name of Baston or Barton, and a fellow by the name of Storns, Mike Douthit, Ewell Douthit and myself.

Q. Where did you go?

A. We made from where we was out to a little patch of woods right back in the mines—right back from the mine, just a little patch of woods along the Huntington road. We made back in there and we went back through a big field and we started back to the field, and a volley of shots came on us from back in this direction (indicating), and we made a turn and cut across the Huntington road and ran down through a cotton patch or a corn patch,—I don't remember just what it was, and—but we took across the Huntington road and went down into that corn patch, and there we ran into a gang of about sixteen of them, and they came up and gathered around us. One of them had a gun, a 45-50, I don't remember which man it was that had that 45-70. It was one of the old fashioned guns.

Q. What did they do with you then?

A. They took us from there along down there a little piece and took us over a litle hollow place and across that mine track and we went down over across the main line of the Midland road and on through the woods and across the wagon road, and there was a field down there with an old
1501 well and an old house that sets back in the field and we all stopped there and got a drink and had a talk; and from there we made it on around through the woods to the school house. When we got to the school house these fellows turned us over to a fellow they called "Captain". I don't know the man, if I seen him I might.

Q. Did you know any of the men that captured you?
A. Yes, I recognized one.
Q. Who was it?
A. I found later it was a fellow by the name of Blackburn.
Q. They left you at the school house? A. Yes, sir."

Mr. Warrum: If the court please, the defendants object to any further introduction of evidence along this line, because it is an attempt to inject into this case something which has nothing to do with the damage suffered by the plaintiffs and is an obvious attempt to prejudice the jury as to the circumstances relating to the killing of two men in a log cabin. These is nothing in this complaint which entitled them to recover for that killing, if he knew only one man there, Mr. Blackburn, and further evidence would be incompetent and immaterial and not calculated to sustain the contention of the plaintiff on any issue in this case.

The Court: Of course, it is all cumulative and has been for a long time, but I see no occasion to exclude it now. Proceed.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

1502 Q. In charge of some other men? A. Yes, sir.
Q. Then what was done with you?
A. He took charge of us then and he—in that little branch that comes down from the mountain—and he said, "you boys come on and get back of the school house" and we went up there, and got back of the school house and we stayed there, I couldn't say how long. And some men came up there and he told them to take us up the hollow a piece out of the way of the shots, and they took us up there 100 or 150

feet and lined us up there and searched us. And from there they took us up the hollow to a little log house.

Q. What happened when you got there?

A. They said for us,—the fellow that had charge of us told us to go in there and sit down, and we went in there and sat down, and everything went on all right until we got ready, —until they got ready to take us up to Hartford.

Q. Before that, before they got ready to take you up to Hartford, [—] did you hear anything that was going on over in the direction of the mines? A. Yes, sir.

Q. What did you hear?

A. We were sitting in the log house and there came a great big yell, you could hear it all around, anyone could hear it; and a fellow said, "They have taken it",—someone
1503 made that remark, I don't know who it was,—"Well, they have taken it".

Q. What happened then? Did anybody come there while you were there? A. Yes.

Q. Who?

A. A fellow by the name of Slankard, a deputy sheriff down there.

Q. Do you know whether he was a constable or a sheriff?

A. He was either a constable or a sheriff,—I know he was one or the other.

Q. Go ahead and tell what was said and done?

A. He came there and he said to these men that was guarding us, "These are my men and I am going to take them to Hartford", and he told us to come out and line up, and I stepped out of the log cabin first,—I stepped out of the door first onto the path and John Baskins stepped out right to my side and we started off, and Earl Sylsberry was the third man out of the cabin. And I heard a shot fired and John Baskins fell right at my side, and I heard another shot fired and I seen Earl Sylsberry,—I turned around and seen Earl Sylsberry grabbed himself right there (indicating) and [—] he just stood up and wheled around this way (indicating) until he faced the man again, and I seen the fellow shoot him and he shot him right there (indicating) and I seen him shoot him the second time, and he turned around and faced the fellow again and he fell, and the fellow walked up to him and looked at him and he used an oath in it and said, "I guess you will not scab any more", and he pointed the gun at him
1504 and put a bullet right through his heart, I seen the bullet him him right there (indicating); and he walked over then to Baskins and used his foot and he kicked him, he kicked Baskins laying right there, and I never seen a move

out of the man after he was shot at all. And he came to me and he looked at me and said, "How long have you been down there?" And I said, "I have been down there a couple of days", and he said, "If I had known you were down there, I would have treated you the same way"; and we had a pretty stiff argument. And someone walked up to him, I didn't know him, and said something to him, and he walked on off over the hill, and I sat right down on a big rock with Baskins laying right in front of me. There was a round rock,—well, it wasn't exactly round, but it was a big rock, and I sat on that and cross my legs that way, (indicating), and I sat there talking to that fellow with my coat across my lap, and this other fellow, whoever he was, came up to him and said something to him, I didn't hear what he said, but this fellow went on up the path and over the hill and that is the last I seen of him.

Q. Did the man that was doing the shooting point his gun at you? A. Yes, sir.

Q. Did he fire it at you? A. No, sir.

Q. Were Baskins and Sylsberry both killed by him?

A. Yes, sir.

1505 Q. Was Slankard there at the time they were killed?

A. Yes, sir.

Q. Did Slankard or anybody else of the men that came with Slankard make any statement about what they had done over at the mines, other than what you have already stated? I mean after Slankard and the others came up, was there anything said that you remember?

A. Nothing that I remember of at all.

Q. About what had been done over at the mines?

A. Nothing I can remember, that I can just recall.

Q. Where did you go then after that? Where were you taken after that?

A. Well, now through the excitement there after these two fellows was killed,—Sylsberry, you might say, was making his last groans when we left, and through the excitement these fellows said to Slankard, "What are you going to do with the rest of these fellows?" And he said, "I don't care what you do with them, turn them loose and let us get out". And they said to us, "You get away from here and don't let us see your face any more", and we cut across Sugar Load Mountain and came back down the road and came back into Mansfield that night in time to get the train at Mansfield.

Q. Before going on to that, did you recognize anybody besides Slankard?

A. Yes, sir, I identified a man by the name of B.
1506 Trout at Greenwood.

Q. Was he there? A. Yes, sir.

Q. Did B. Trout say anything to you or say anything to the man that did the shooting?

A. Not that I can remember of.

Q. Did anybody do anything to the man that did the shooting? A. No, sir, he told us to beat it on over the hill.

Q. Was Trout present at the time the shooting was done?

A. Yes, sir.

Q. Was anything said to you as to what they would do with you if they caught you there any more?

A. Yes, they said that if they caught our faces back there any more, they would do to us the same as they did to the rest of them.

Q. Describe the man, as near as you can, that did the shooting?

A. The man that did the shooting was a man that would weigh between 150 and 160 pounds. He had dark hair and wore a blue shirt and black pants like I have got on here (indicating), and if I am not mistaken, he had a belt on.

Q. You stated you went to Mansfield? A. Yes.

Q. Where did you go from there?

A. Into Ft. Smith from there.

Q. Where did you go from Ft. Smith?

A. I went to Drexel, Missouri. This employment
1507 agent on Sixth Street,—there was an employment agent there, a heavy set fellow,—

Q. (interrupting). Did you go back down to the scene of the trouble at these mines any more after that?

A. Yes, sir.

Q. When?

A. I went over to Greenwood to go back down there on Saturday and Mr. Little and the other men that were to go with me,—it was kind of late when I got over there and they decided it would not be safe to go down there Saturday night.

Q. That was Paul Little, the prosecuting attorney?

A. Yes, they decided it would not be a good idea to go down there Saturday night and the best thing for me to do would be to come back over to Ft. Smith and come over there early Sunday morning and we would go down on Sunday.

Q. Come over where?

A. Over to Ft. Smith, and I came back to Ft. Smith then and reported to Mr. Finley I wouldn't go down there,—

Q. Don't tell what was said. What did you do on Sunday morning?

A. I went down and got a car and went over to Greenwood.

Q. Then what did you do?

A. We went from there down to Prairie Creek.

Q. What were you going down there for?

A. We were going down to Prairie Creek to look after the men that were killed down there.

Q. Tell what was done after you got down there?

A. We went from here over to Greenwood, and I got
1508 Paul Little and that big, heavy deputy sheriff over there, I can't remember his name at all, I think there was four of us in the car, about four that went down there; and we got two men after we got down there. And in the meantime while I was over there. I told these [prople] where they could look for these fellows and when we got down there, there was two deputy sheriffs down there. I don't know whether it was Bean, or who it was.

Q. When you got down where?

A. At Prairie Creek. We met them down there and when we got to the school house there is a wire line that comes out through the woods and we were coming out that line, and they came up and said to me, "We can't find those fellows no place," and I said, "No, I couldn't find them out there, if you went where I told you to go you would have found them." And he said to us, "You know where it is at, you take the lead," and I said, "Come on;" and we went up there, Paul Little and I, and the deputy sheriffs with me, and we got up there within twenty or thirty feet of the place, or more than that, and I looked and seen the cabin was not there, and when I got up there I said, "It is burned down," and I left there then and went over with one of the deputy sheriffs, and I showed where Baskins laid, and I showed where Sylsberry laid, and where Sylsberry laid there was a big round place where it looked like a fire had been built. We looked for blood and cvould not find any. In the meantime Paul Little walked up around the cabin and got to kicking around with his feet, and he said to me, "Mr. Thomas, here is some bones in here."

1509 By Mr. McDonough:

Q. State what was done, and not the conversation. State what you saw and what was done?

A. Well, as I say, Paul Little went up there and kicked around the fire.

Q. Did you go up there, too? A. Yes, sir.

Q. What did you find?

A. I went up there and kicked around and I raked out some bones, I raked with my hand and burned the end of my finger and the scar is there to this day. And I raked out a part of a human body, I could not tell whether it was a liver or heart or what it was. I could not say. There was a water bucket there, and we took that water bucket, after the cabin was burned down, the bucket was not all burned, and I took it and filled that bucket up with bones, and we stayed around there a while and then came on right back down the hollow to where the fire was.

Q. Did you find in those bones any part of a human teeth or jaw? Go ahead.

A. We came on back down the hollow there.

Q. First, did you say what that was? I didn't catch it, if you did. What that bone was?

A. I took it to be half of a jaw, right around here (indicating) with human teeth in it. I carried that in my hand on down the hollow after I had my bucket full, and I put them in the car and went down to the mines and looked around there?

Q. How long did you stay there?

A. Not very long.

1510 Q. Was there much of a crowd there?

A. Not many, but they began to crowd in.

Q. At whose suggestion did you get away from there?

A. Why, the deputy sheriff that was with me came up to me and said—

Q. Don't state what he said.

A. There was a remark came to me,—he said, "We had better be getting away," and I said, "Wait a little while," and after a while we went away.

Q. You went away at the suggestion of the sheriff?

A. Yes.

Q. Did you go away with the sheriff?

A. Yes, sir.

Q. Do you know the first name of Mr. Blackburn, the man you mentioned?

A. I don't remember whether it is Ray or Roy. I don't remember his first name.

1511 Mr. Warrum: No cross-examination.

Mr. Lucas: There is only one question on cross-examination that we desire to read, if the court please.

"Cross-Examination

"Q. Mr. Thomas, what time was it that the shooting occurred there that you have told about?

A. Well, I couldn't just exactly answer that, because I don't know; somewhere probably about one, maybe a little after."

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1512 JAMES K. MCNAMARA, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is James McNamara? A. Yes, sir.

Q. You worked at No. 4 Central? A. Yes, sir.

Q. In October? A. Yes, sir.

Q. During 1914? A. Yes, sir.

Q. You were check-weighman there, were you not?

A. Yes, sir.

Q. When did you first hear that the Bache-Denman Company was going to start open shop?

A. It was along about the time that there was some rumors coming in from Kansas City, from Bache and Mr. Holk and others.

Q. It was along at the end of March or the middle of March? A. I think so.

Q. When you heard those rumors did you go down to Prairie Creek? A. Yes, sir.

Q. Did you see a notice posted there? A. Yes, sir.

Q. As near as you can remember tell what that notice said?

A. Well, that notice instructed Bache's employees to vacate the houses. You see, that has been a long time.

1513 Q. That is all right. Take your time and tell us near as you can remember what the notice said?

A. Simply to vacate the house.

Q. Did it say anything about cleaning up?

A. Yes, sir. He wanted the men in the mines,—he gave them three days, possibly more, to clean up the place and vacate the house.

Q. Vacate the houses?

A. No, sir, he didn't say all of them. I don't think the notice said all of them, just to vacate the houses, to the best of my recollection.

Q. Did the notice say anything about who was going to work there? A. Yes, sir.

Q. What did it say?

A. It said men would be furnished work that wanted to remain and not belong to the union, something to that effect, words to that effect.

Q. In connection with that vacation of the houses, while we are on that subject, do you know of the union men being put out of all of the Bache houses during that trouble?

A. No, sir, I don't think they were put out of all of them.

Q. There were two camps there, Prairie Creek No. 3 and Prairie Creek No. 4? A. Yes, sir.

Q. Those were the houses the men lived in who worked in those mines? A. Yes, sir.

1514 Q. They all belonged to the Bache-Denman Company? A. Yes, sir, that is what I understood.

Q. Did you go to Prairie Creek camp No. 4 during the open shop operation? A. Yes, sir.

Q. Who were living in those houses at Prairie Creek No. 4?

A. They were union men's families living in them at Prairie Creek No. 4.

Q. Did you stop there?

A. Yes, sir, I stopped there and got a drink of water, the first house in the row.

Q. During this time do you remember any discussion in a local meeting by the union men about the union men living in these houses? A. Yes, sir.

Q. What was that? Where was that?

A. That was local 1526, that I was a member of. There was some discussion came up about people living in Prairie Creek houses in spite of Mr. Bache. [There was a discussion came up about living in Prairie Creek houses in spite of Mr. Bache.] Jeff Mealor discussed it.

Q. Jeff Mealor? A. Yes, sir.

Q. What did he say about it?

A. He said a man named Howard was living in a Prairie Creek house of the Bache-Denman Company.

Q. Did he say anything about whether he paid rent?

1515 A. He said he was living there, rent free of charge.

Q. Do you remember anything Joe York said at that meeting? A. That same meeting?

Q. Yes, or any other meeting at that time?

A. Joe York mentioned someone living there, I don't recall the name he mentioned. He said there were men living in Bache's houses and fighting us at the same time.

Q. Did you hear any discussion in that meeting as to whether any of the men went there before those people were asked to get out of the houses in No. 3 camp?

A. It was York who made that expression in the local.
Q. What did he say about it?
A. York said there was a family moved up close to the mine, moved into another house belonging to the Bache-Denman Company.
Q. Did they live there during the strike?
A. At the same time, yes, sir.
Q. Some days after your visit to Prairie Creek, did you hear of a letter that Little Pete Stewart got? A. Yes, sir.
Q. Who was Little Pete Stewart?
A. Little Pete Stewart was a nephew to Big Pete Stewart.
Q. What did Little Pete do in connection with the union, generally?
A. Well, to the best of my recollection, he was a local officer of some kind, in local 1912, but he was a kind of an assistant to Big Pete during his absence. In other words, he was a local man around Hartford for the mine workers.
1516 Q. Did he show you that letter?
A. Yes, sir.
Q. What did the letter say, as near as you can remember? I am going to ask you throughout in regard to conversations and letters, to state as near as you can remember the words that were used, but if you cannot remember the words give as near as you can the substance of it. State what the letter said.

Mr. Warrum: I should think the letter would be the best evidence of its content. There has been no showing made that it has been lost. We object to that question, and the evidence sought thereby.

Q. Do you know where the letter is?
A. At the present time?
Q. Yes, sir. A. No, sir, I don't.
Q. Did he show you the letter or read it to you?
A. He read it to me.
Q. He read it to you? A. Yes, sir.
Q. What did he say in reading the letter? The question in regard to the letter is as to the notice, and what was done in pursance of it. It is not a contract.

Mr. Warrum: The defendants renew their objection. It is another way to prove the contents of the letter.

The Court: I should think so. Have you taken any steps to ascertain whether that letter is in existence, or can you prove its loss?

1517 Mr. Drinker: No, your Honor, I cannot. The letter was read in a meeting later. We can wait until we come to that. It is not important, anyhow.

The Court: It is the best evidence.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Did Little Pete read that letter to any other union men there? A. Yes, sir.

Q. In pursuance of what was read in that letter, was there a meeting called? A. Yes, sir.

Q. Now, the first meeting, after that letter, tell how that was held and how it came to be called and what was said there?

A. That letter was read some two or three days before the meeting was held in a ball park as a result of that letter.

Q. Who called the meeting? How did the meeting happen to be called?

The Court: When was that meeting?

Q. When was the meeting? Do you remember the date?
A. No, sir, I don't remember the date.
Q. Was it before April 6th?
A. Yes, sir.
Q. Two or three days before April 6th?
A. Just a short time before that.
Q. Who called the meeting?
A. I was working that day on the tipple, and Bill Reed came up there and told me to call the men out of the
1518 mines, that they were going to hold a meeting at the ball park. I did what he requested, and at about one or two o'clock that afternoon they held a meeting in the ball park.
Q. Who was elected chairman of the meeting?
A. I was.
Q. Did anybody make speeches at that meeting?
A. Yes, sir.
Q. Who? Do you remember?
A. Sandy Robinson's father, I don't know his first name.
Q. Charley? A. Charley, yes, sir.
Q. Was he a little bit lame? A. Yes, sir.
Q. Uncle Charley, they called him?
A. Uncle Charley, yes, sir.
Q. He made a speech? A. Yes, sir.
Q. What was his attitude, was he a pacifist?
A. He was rather radical in some respects.
Q. During the meeting what happened?

A. I was called to the telephone by Big Pete Stewart from Ft. Smith.

Q. And you went to the telephone? A. Yes, sir.

Q. And you found him on the telephone?

A. Yes, sir.

Q. Tell what he said and what you did, in the tele-
1519 phone conversation?

A. He told me to disperse the meeting.

Q. Did anybody else hear that telephone conversation?

A. Yes, sir, the telephone girl heard it.

Q. How did she happen to hear it?

A. I told her to listen on the phone, because we might possibly want to use her later on as a witness in the case.

Q. Did Stewart say anything to you besides to call it off?

A. Yes, sir, he said he would see me in a few days, or possibly be down to Hartford, or something to that effect.

Q. Did you know before or did you find out subsequently why he called you on the telephone and said that?

A. I don't understand your question.

Q. Did he tell you afterwards why he called you on the telephone and told you to disperse the meeting?

A. Yes, sir.

Q. Why was it?

A. He said he did not want anything to go over the telephone that people—that the public could hear, that would bring us in condemnation of the public—the district organization.

Q. Did he tell you why he called the meeting off?

A. Yes, sir.

Q. Why did he call the meeting off?

A. I don't just recall that right at the present time.

Q. Then did you have another meeting?

A. We held a meeting in one of the Central Coal & Coke Company's buildings that same night.

1520 Q. Who was elected chairman of that meeting?

A. I was.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was to go to Prairie Creek that night and guard Prairie Creek. There were some rumors of trouble happening in Prairie Creek by the Prairie Creek guards at the mines.

Q. Did you hear about this time, through Little Pete Stewart, as to any talk that Big Pete had had with Mr. Bache?

A. Yes, sir.

Q. What did Little Pete tell you as to that?

A. Little Pete said he had received a letter from Big Pete from Kansas City, stating—the letter was read, is that what you want?

Q. Yes. Tell what Little Pete said?

A. Stating that he couldn't do anything with Bache.

Q. Did he say he had met him?

A. Yes, sir, he said he had met him in Kansas City, and he couldn't do anything with Bache, and it was just up to us to take care of the situation.

1521 Q. At the meeting—what was the purpose of the meeting? A. In the rear?

Q. In the rear of the Central?

A. It was all arranged to go to Prairie Creek that night, and make preparation for what we intended later on.

Q. That was the night before April 6th? A. Yes, sir.

Q. Sunday night? A. Yes, sir.

Q. Who was the chairman of that meeting?

A. I was.

Q. Was anybody elected to manage the parade?

A. I was.

Q. You were elected captain?

A. Yes, sir.

Q. What did you do after the meeting [disbursed]?

A. I went up and telephoned to Midland and Huntington.

Q. Who did you ask for?

A. Just the union men.

Q. In each place? A. Yes, sir.

Q. What did you tell them?

A. To come to Prairie Creek school house tomorrow, we were going to hold a meeting there about 12:00 or 1:00 o'clock.

Q. Did you tell them to come by themselves?

A. No, sir, to bring everybody that would come.

Q. What did you do after that, that evening?

1522 A. It was late in the evening then.

Q. The next morning, what did you do.

A. We arranged a parade, and marched out—

Q. Before you arranged the parade, did you go around town?

A. Yes, sir, that evening or the next morning?

Q. The next morning.

A. We went around the town and asked the merchants to close their business and go with us.

Q. Asked the merchants to close their stores?

A. Yes, sir, and go with us.

Q. Did any of them refuse?

A. Yes, sir, Jeff Edwards refused.

Q. He was the only one that would not go?
A. To the best of my recollection he was.
Q. Did Joe McConnell go along?
A. Was he the store man?
Q. Yes.
A. He would not close up, either.
Q. He was not in sympathy with the Mine Workers?
A. He was not in sympathy with us.
Q. Now the next day you all marched down, we have heard about some of these things, and I will pass them by—you all marched down to Prairie Creek with a band and a whole lot of people, and got there, and another crowd came from Huntington and another from Midland, and you all met together there? A. Yes, sir.

Q. And how many people do you suppose there were
1523 there altogether?

A. I would judge somewhere between three and four thousand people.
Q. Everybody in the country was there?
A. Yes, sir.
Q. Speak up, we all want to hear.
A. I have an awful cold.
Q. Who presided at the meeting?
A. I was chairman of the meeting.
Q. You presided? A. Yes, sir.
Q. You made a speech? A. Yes, sir.
Q. And who else made speeches?
A. There was a drug store there, I forget his name, and Freda Hogan.
Q. She was from Huntington? A. Yes. sir.
Q. And Mrs. Johnson, the editor of the paper at Hartford? A. Yes, sir, the—
Q. Hartford Observer?
A. Yes, sir, that is it, the Hartford Observer.
Q. She made a speech?
A. Yes, sir.
Q. Was she on the inside as to all of this, Mrs. Johnson?
A. You mean on the inside, she knew everything about it?

Q. Yes. A. Why, certainly.

1524 Q. Throughout this whole business?

A. Yes, sir, she was just as instrumental in it as any of us.
Q. Now, what was the substance of the speeches?
A. Well, my speech was, I believe I was the first that made a speech, I advised them to go to the mine, and not to use any violence of any kind, and ask the men to come out and join

the union and quit scabbing. That was the principal key note of my remarks.

Q. What was the general substance of the other speeches?

A. Practically the same thing.

Q. Everybody said to be orderly, and no violence or anything of that kind? A. Yes, sir.

Q. Now if the only purpose of the meeting was to go there quietly, and only use the kind of methods that were in the speeches, why did you bring such a big crowd of people with you?

A. That was just a pretense, like many other things that occurred in this case, this trouble; it was all to preserve public opinion.

Mr. Warrum: This is a characterization on the part of the witness, and we object to his characterization of everything that occurred as a pretense; we object to it.

The Court: It doesn't matter in this case what he thought was a pretense, but the question is what happened.

Mr. Drinker: The purpose of the people in this case is if vital importance, and this man knows more about it than any living soul.

1525 The Court: But this is merely his opinion. Proceed.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

By Mr. Drinker:

Q. Why did you have these speeches made?

A. Why did we have the speeches?

Q. Yes.

A. For the purpose of showing to the community the strength of the people that opposed what Bache was doing at that time.

Q. Had you any arrangement with Mrs. Johnson as to reporting the proceedings there in the paper, and giving publicity to all these speeches, and so forth?

A. No, sir, I did not.

Q. Did you know she was going to do it?

A. Well, certainly, in a way, I knew she was going to do it; she had done that before in the paper.

Q. Did the influence of public opinion have anything to do with the way you handled this situation?

A. Why, certainly.

Q. Tell about that.

A. Of course public opinion—the Mine Workers' organization, I will say, in general, at large depends on public opin-

ion in much of their troubles, and they try to preserve public opinion.

Mr. Warrum: This is an attempt on the part of the witness to give his opinion as to the purpose of a labor organization; he is not stating facts.

The Court: That is true; but it is possible that if he knows what it was done for, he can state it.

1526 To which ruling and action of the court the defendants at the time duly excepted and still except.

A. I do know it.

By Mr. Drinker:

Q. Were these speeches made—for what purpose were all these speeches made at that time?

A. It was for public opinion, to keep public opinion on our side.

Q. In case what happened?

A. In case there was any violence or trouble at the mine, public opinion would say we went there for the purpose of getting these men to join the union.

Q. Now was that a new thing, that kind of a way of handling the situation, was that a new thing in your experience with the United Mine Workers? A. No, sir.

Mr. Warrum: The defendants separately object to this question as calling for a conclusion and inference on the part of the witness as to whether or not the thing was usual. He can state what was done before and what was done afterwards.

The Court: He can probably state the purpose for which it was done.

Mr. Warrum: And we object further for the reason that it is leading and suggestive, and this witness has shown himself more than a willing witness for plaintiffs' counsel, and he does not need to ask questions indicating the answer disired.

The Court: Proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

1527 (Question read by reporter.)

A. No, sir, it was not a new thing.

Q. Tell about that.

A. It was practically practiced all over the country.

Mr. Warrum: We object to the question, "Tell about that", because it doesn't mean anything.

Mr. Drinker: He knows what it means.

Mr. Warrum: I have no doubt of that, but we want a question that the rest of us can understand.

The Court: Proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. I know it to be a fact that this is what is practiced practically everywhere where the Mine Workers have trouble with the Operators.

Q. McNamara, did you ever hear, in all your experience, with the Mine Workers, of a case where a member of the union was in any way fined or disciplined or suspended or discharged on account of him having done violence to property or individuals in a labor dispute?

Mr. Warrum: The defendants separately renew their objection, and for the further reason that the answer sought would not throw any light on the issues in this case.

The Court: Let's have it, overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. I have not.

1528 Q. About four years before this, in 1910, had there been a similar demonstration, so called, at the Bache mine, when they attempted to run open shop?

A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Who led that for the miners?

A. A man by the name of Nick Geiss.

Q. Nick Geiss? A. Yes, sir.

Q. And just briefly what happened at that time?

A. Well, they made a march all over that part of the country to get men to leave the strip mines, to the best of my recollection, and join the union.

Q. That was a Bache operation, was it?

A. I don't recall, but I believe it was.

Q. And were they successful in [persuiding] the men to march out—the non-union men to come out?

A. Yes, sir.

Q. How many union men, about, were down there?

A. I don't know how many.

Q. Was it a large or small crowd?
A. A large crowd from Huntington, Hartford and Midland.
Q. It was a similar demonstration to this one?
A. Yes, sir.
Q. Now we won't go into detail as to all of the facts here at this April 6th riot, because we have heard that from
1529 other witnesses, but there are a few points I want to clear up, that have not been clear. You were chairman of the meeting? A. Yes, sir.
Q. You appointed a committee? A. Yes, sir.
Q. Who was on that committee?
A. A man by the name of Howard.
Q. He was a Prairie Creek man?
A. Yes, sir; and Jim Slankard.
Q. Was that the same Howard that was spoken about as living in a Bache house? A. Yes, sir.
Q. The same man?
A. Yes, sir, and Jim Slankard and John Menick.
Q. John Menick was president of the Midland local?
A. I don't remember that; he lived at Frogtown or Prairie Creek, one of the two places.
Q. What did you tell the crowd to do?
A. I told the crowd to remain there until they went over and saw the management.
Q. What did the crowd do?
A. And to come back and report to the committee.
Q. What did the crowd do?
A. They followed them over there.
Q. And who were left there?
A. There was principally all women left, and a few of the speakers—I believe all of the speakers.
1530 Q. Did you stay there? A. Yes, sir.
Q. When was the first you knew of any trouble down there?
A. Possibly ten minutes after the committee left.
Q. You heard a noise down there? A. I did.
Q. And you went down there? A. Yes, sir.
Q. You need not mind the fight, we have heard all about that. But after a little while, did you go around behind the boiler house and see a crowd there?
A. I went up to the boiler house and looked in, and they were pulling the fires; there were quite a number of men gathered around he firemen, abusing them, and had grabbed a man and taken him out the back door. I went out the front

door and around the back when I got around there, there was quite a bunch of men there, and some men apparently down fighting.

Q. What did you see?

A. I couldn't see much; I got in the center of the crowd and felt something go by me, and I looked down and saw a foreigner coming through the crowd on his hands and knees, pushing us apart, and he had a knife in his hand. I stepped on his hand and reached down and grabbed him and pulled him up and took him back of the crowd and told him to get away from there.

Q. Who provided the manner, "This is a Union Man's Country"?

A. I don't know, but I think it was the Huntington or Midland bunch.

1531 Q. Did you hear from the other union men as to who started the fire that night?

A. I heard it stated on the street that the Prairie Creek men started the fire—that was at Hartford.

Q. Was little Pete Stewart at that meeting, or don't you remember? A. At the school house?

Q. Yes. A. I don't remember seeing him.

Q. Now after the riot did you, and within the next week or so, did you see Pete Stewart—and when I say Pete, I mean big Pete, unless I say little Pete—did you see big Pete and talk to him in the next couple of weeks? Was he down at Hartford? A. I believe he was.

Q. Off and on? A. Yes, sir.

Q. Was he freqently down in that country during these three months? A. Yes, sir.

Q. Did he know everything that was going on?

A. Yes, sir.

Q. Did you report to him?

A. Quite a number of times.

Q. And who else ran this strike down there from the different localities—was one in charge at Midland?

A. The Shaw brothers, and others.

Q. And who was in charge at Huntington?

A. I don't know who was in charge, Mr. McLachlan

1532 taken care of part of that, I believe.

A. And who was in charge at Prairie Creek?

A. John Menick, Clint Burris, Sandy Robinson, and quite a number.

Q. And who was under you at Hartford?

A. Practically everybody.

Q. Who was your lietenant, you might say?

A. I don't know that I had any.

Q. What was Charles Pattie?
A. He worked at the Bolen-Darnell mine.
Q. Was he the next man under you?
A. I don't know, he played a pretty active part in the trou ble.
Q. But throughout this whole thing you were the captain? A. I believe I was considered so, yes, sir.
Q. Now passing very briefly over this period, what in a general way was done by the union, if anything, in reference to keeping the men from coming to Prairie Creek; keeping the non-union men from coming in to work there?
Q. There were quite a number of things done. Mr. P. R. Stewart told me that he had a little friend in Little Rock that would notify him by wire when there was a shipment coming through from Tennessee, or that southeastern country. He also told me that he had men at the station that would notify him if he seen any men going that was looking for work, and when a man would come out to work for Bache on the train, when they would come to Prairie Creek, John Menick and these boys around would try to prevent them going to the mine, stop them.
Q. Was Tom King around this country then?
1533 A. Yes, sir.
Q. Did he have anything to do with that?
A. Yes, sir, he quite often rode out on the train and tried to prevent men going to the mine.
Q. What position did you know Tom King as occupying with the United Mine Workers, from the first time you knew him?
A. The first time I ever knew of him was in Bonanza, back in possibly 1902 or 1903,—possibly 1898; I was pretty small boy at that time, and he was a local man there at that time.
Q. What was the position that he occupied after that in the organization? A. National organizer.
Q. For how long was he that?
A. I couldn't tell you that, but for a long time he was one of the force.
Q. Did you ever know him as occupying any other position? A. I did not.
Q. What is a district organizer?
A. I don't know what a district organizer is, I never heard of any.
Q. Does the district constitution provide for a district organizer? A. Not to my knowledge.

Mr. Warrum: I would think the constitution would speak for itself on a point of that kind, and we object to the question and move to strike out the answer.

The Court: He said he didn't know anything about it.

1534 To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. You know the reason you are here is for these gentlemen of the jury to hear you—

The Court: And speak loud enough so counsel can hear what you say.

A. I will do the best I can.

Q. If your voice gets tired I will go slow. I want to make it as short as I can. A. All right.

Q. Did you have any personal part in the Cleary investigation? A. No, sir, I did not.

Q. Who started that, do you know?

A. The district organization, District 21.

Q. What was the purpose of that?

A. To get Cleary to come to Hartford and make an investigation.

Q. Who was Cleary?

A. The state labor commissioner.

Q. Was he in sympathy with the union?

A. Yes, sir, he was.

Q. And what was the purpose?

A. To scare the men [aware] from Bache-Denman mines, as I understood, that were working there at that time, to get them to come to Hartford, and they would fine them so heavy, and then give them permission to leave the state or pay the fine.

Q. Did somebody go down with Cleary to look over the mine? A. Yes, sir.

1535 Q. Who was that? A. Jim Slankard.

Q. Did he tell you what he saw?

A. He said he went to Bach mine to look around and see how many men they had, and what progress they were making at the mine.

Q. Now, Mr. McNamara, in the language of the union miners, has the word "thug" quite a different meaning than the ordinary meaning? A. Yes, sir, it has.

Q. What does thug mean to a union man?

A. Thug means a man that is deprived of any principle whatever.

Q. Is that what thug means to a union man?

A. Yes, sir.

Q. Has the word thug got anything to do with guarding property? A. Yes, sir.

Q. What does it mean in that connection?

A. It means a man who would guard property worked on a non-union policy or plan.

Q. Will a union man regard a man a thug who guards non-union property, no matter what his character is?

Mr. Warrum: I object to that—

The Court: Oh, yes; if the word is used, you can then ask him to define it.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. If a man is guarding open shop property, whether he is a minister or school teacher or what he is, is he called
1536 a thug just the same?

A. Yes, sir, he is considered a thug regardless of what his standing is.

Q. And regardless of what his behavior is?

A. Yes, sir.

Q. Now, Mr. McNamara, we heard in this case a good deal of talk about armed guards and thugs. Is such talk any part of the propaganda of the United Mine Workers of America to which you referred in the beginning?

A. Yes, sir.

Mr. Warrum: Now, if the court please, previous to his answer the defendant would like to interpose a separate objection that it is incompetent, and calls for a conclusion as to what the propaganda of the union miners is, and assumes there is propaganda of that sort, and it is leading and suggestive.

The Court: Well, this man has had some experience as a union man, and I suppose he may state. Proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Now, state what use is made of talk and publicity about armed guards and thugs in connection with a strike?

A. We frequently read in the United Mine Workers Journal,—

The Court: We all read that, you are speaking as a member of the union, and not as to what is in the Journal.

A. I don't understand the question then.

Mr. Drinker: He is giving that as an illustration—

The Court: What is in the Journal will speak for
1537 itself.

Mr. Drinker: I am going to ask next why they put that in the Journal, about armed guards and thugs.

The Court: He may not know about that.

Mr. Drinker: I am sure that he does; it is hard to get a witness that knows about these things, but we have one here.

The Court: Proceed.

(Question read by reporter.)

A. Now, where there is armed guards on at a place, and thugs are employed, it is usual that the miners try to use such propaganda that will disqualify, in the eyes of the public, anything that the thugs are doing; they use that to camouflage the public.

Q. Mr. McNamara, along about the beginning of May, did you go up to Ft. Smith to see Mr. Stewart?

A. Yes, sir.

Q. Now, tell about that visit.

A. I went to Ft. Smith, I don't just remember the date, but I went to the Hotel Southern and inquired for Stewart, and someone told me he was not there, he was sick at some house down this way (indicating), and directed [—] over where in this location, four or five blocks. I went down to the house that they directed me to, and knocked on the door and a lady came to the door and I asked for Pete Stewart, and she said he was sick. I told her I must see him, and she went in, and then came back in a few minutes and said to come in, and I went in and Pete was setting on the side of the bed in his night clothes, and I shook hands with him, and he said, "How is things at Hartford?" And I said, "All right."

And he said he had something to tell me, that he had
1538 been up to Kansas City and had a talk with White, and he said they had arranged a plan up there to prevent Bache from producing coal.

Q. Did he say anything that you would see White later?

A. Yes, sir, he said Mr. White told him that he would be over there pretty soon and wanted to see youse—that is the way he said it, Pete is Scotch, and that is way he said it.

Q. Did you talk anything else about the meeting at that time? A. Yes, sir.

Q. How long were you there?

A. About 30 minutes, approximately.

Q. What White was talking about?
A. John P. White, President of the National organization.
Q. After that did White come to Ft. Smith?
A. Yes, sir.
Q. Did you see him? A. I did.
Q. Tell how that happened and what was said.
A. It was along during the Holt convention.
Q. Do you know when that was?
A. I believe in May.
Q. The convention was the 18th to the 23rd of May?
A. Anyway, I was in the convention hall, and it was about the second day of the convention. Jim Slanker came to me and said, "John P. White wants to see us at the Hotel Main after the convention adjourns", and I said, "All right, we will stay together." A little after 12:00 o'clock,
1539 when the convention adjourned, we went to the Main Hotel and stayed in the lobby, and in a few minutes White came along.
Q. Did you know him?
A. No; he nodded his head for us to follow him to the elevator.
Q. Did he know Slankard?
A. I suppose he did, he nodded to him, and we went up in the elevator, and in the parlor on the first floor, and he shook hands with us and said, "How is things at Hartford", and I told him all right.
Q. Speak up, now.
A. And he said, "How is things at Prairie Creek", and I said, "Things are a little watery in Prairie Creek No. 4 yet", and he said, "Yes, I have informed on that"; and he said, "Stewart told me that they can not get enough men to operate the mine." He said, "If they do that, we must prevent that coal from getting into the market."
Q. Did he say why? A. Yes, sir.
Q. Tell it.
A. He said because if Bache coal, scab dug coal got into the market it would only be a matter of time until every union operator in that country would have to close down, his mine, or scab it, because the union operators could not meet Bache competition.
Q. Did he say any more after that?
A. Yes, sir.
Q. What did he say?
1540 A. He said, "When you go back to Hartford", he said, "I want you to tell the men what I have told you, but don't tell them I have told you."
Q. Did he say why not?

A. Yes, sir, he said he didn't want the National organization mixed up in this case; he said, "So far you have handled it, this part, and we have West Virginia and Colorado on our hands, and we can not bear any more fights."

Q. After that did you go up and down the valley, as he said?

A. I went back to Hartford and just quietly told the men what he said.

Q. You what?

A. I quietly told the men what he said.

Q. How many of them did you tell, in a general way?

A. I don't remember, I told practically everybody, I suppose.

Q. What did you tell them?

A. I told them what White told me.

Q. Tell them the reasons, as he had given them to you?

A. Yes, sir.

Q. And did you organize any committee to spread this up and down and around?

A. No, sir, not at that time.

Q. Did you tell any of the men to do it?

A. Yes, sir.

Q. In pursuance of that, was that doctrine told all over the valley? A. Yes, sir.

1541 Q. After White had said [to] this to you—first, how long were you talking to him there?

A. It was not very long; White, when we finished talking, he said, "I have some more men to meet, and I have to get lunch and back to the convention before it reconvenes", so we assumed that was all he wanted to say.

Q. What did you do then?

A. We rose up and walked over to the elevator, and White said, "Let me go down first and you fellows follow me". So that is the last I saw of White for a long time.

Q. What did you do then—he did go down first and you took the next elevator? A. Yes, sir.

Q. When did you see him again, the next time, if you remember?

A. To the best of my recollection, it was when I came out of the penitentiary.

Q. When was that?

A. It was in the spring of 1916, I believe, or the fall of 1915—no, the spring of 1916.

Q. What kind of weather was it?

A. It was warm.

Q. How did you know it was warm weather?

A. I assume it was, they were all in their shirt sleeves.

Q. Where did you see him? A. In Hartford.
Q. Where?
A. At the hotel at Hartford. This hotel is up near
1542 the school house, there are two there in town, one down by the depot and one up by the school house, and there was a car parked there, and I heard that White was in town with other National men.
Q. I don't ask you what he said until we come to that time, but I want to fix the time and place and the people that were there at that time, and then I will ask what was said. As near as you can tell, it was in the spring of 1916?
A. Yes, sir.
Q. Warm weather? A. Yes, sir.
Q. And you said there was a car parked?
A. In front of the hotel, and White was setting in the car
Q. In the front or back seat?
A. In the back seat.
Q. And who was with him?
A. James Ferns was with him.
Q. That is Mr. Ferns over there?
A. Yes, sir.
Q. Do you remember anybody else that was with him?
A. There were some strangers, and I was told they were National men, but I didn't know them; I heard one of them was Frank Farrington, but I didn't know him.
Q. I will come to that again, but we want to get at it chronologically. You were a delegate to the district and national conventions in 1914, from your local?
A. I think I was; I attended most all of the conventions as a delegate from my local during that time.
1543 Q. And you heard whatever had been said at those conventions? A. Yes, sir.
Q. Now the period or date that you saw White here was in the week of May 18th,—the convention was May 18th, and that would have been, you say, about the second day, about May 19th, and the convention closed the end of that week. Now, did you know what Pete Stewart did on the Monday following that convention, about going around the field?
A. Yes, sir.
Q. Tell about that.
A. He came to Hartford and made a speech.
Q. How did he get there? A. Came in a car.
Q. Who was with him? A. Paul Little.
Q. Who was Paul Little?
A. He was the prosecuting attorney for this county.
Q. And had he an agreement with the miners, or any understanding as to his part in this whole business?

A. It was not in the agreement, I don't suppose; if there was any agreement made by the district I don't know that. but there was a general understanding with reference to it.

Q. What was that?

A. That he would be elected judge of this county, some judge of this county, if he would give his support to the union men.

Q. Why did you want to have him elected judge?

A. So we could rely on him in case we came up before
1544 him with our cases.

Q. Now the judge that was down there at the time, he was all right, was he, he had nothing to do with this?

A. Yes, sir.

Q. He was not—you fought him, did you?

A. Yes, sir, as I understand it.

Q. He was perfectly straight, the judge that was in office, at that time? A. Yes, sir.

Q. I don't want to hurt anybody here, if I can help it, and I want to keep all the names out I can. Do you know where Pete Stewart [—] in that automobile? A. Yes, sir.

Q. Where did he go?

A. To Prairie Creek and Midland and Huntington and Hartford.

Q. You saw him when he came to Hartford?

A. Yes, sir.

Q. Did you hear him make a speech? A. Yes, sir.

Q. What did he say, as near as you can remember?

A. I can't remember all the speech, but some phases of it.

Q. What was it?

A. He said he would furnish guns and ammunition to all these men and their families in that valley, and if it was necesary he would sacrifice his own life to prevent Bache getting coal out of there.

Q. Now, speaking of guns, what do you know about
1545 the purchase of these guns, did you ever see them?

A. Yes, sir.

Q. Where? A. In Oscar Layton's house.

Q. Approximately how many did you see there?

A. I would [judg] approximately between three and four hundred.

Q. What kind of guns?

A. High powered Winchesters—I won't say they were all high powered Winchesters, but there were different kinds; they were all of the Winchester type.

Q. Were there that many?

A. Yes, sir, I know there was.
Q. What were they in? A. In boxes.
Q. How many?
A. Two boxes, and quite a bit stacked up on each side of the boxes.
Q. Do you know what became of those guns?
A. There were some of them distributed to the miners, and some returned to McAlester.
Q. Why were they returned to McAlester?
A. I understand there was some kind of a court order to return them to McAlester.
Q. The Federal injunction was issued on the 8th of May?
A. I don't know.
Q. Do you know who sent for them to come back to McAlester? A. Who sent for what?
Q. Who sent for the guns to be sent back to Mc-
1546 Alester? A. Judge Youmans.
Q. What man in the miner's organization?
A. Who was sent after them?
Q. No, who told them to send the guns back to McAlester, who of the miner's people? A. Fred Holt.
Q. He had them sent back there? A. Yes, sir.
Q. Did you get them back again before the battle?
A. We got some of them back.
Q. Now we will skip along to about the week before the big battle. Tell what you know about the shooting up of Frogtown. Briefly, who shot up Frogtown?
A. Jim Slankard and old man Gluck.
Q. Were you there? A. Yes, sir, I was there.
Q. Did you see it happen?
A. I didn't see it, but we were all sitting there in the dark, and they said, "We will go out and have a little fun", and in a few minutes there were some shots fired, and they came back and said, "I guess that will start it."
Q. What was the purpose of that?
A. To get the women and children scared and run into Hartford and tell them that the guards were down there shooting up Frogtown.
Q. What do you know about the telephone call to Judge Youmans? A. I know about it.
1547 Q. What was the purpose of that?
A. Will McLachlan put that call in.
Q. Who advised that? A. Paul Little.
Q. He invented that? A. Yes, sir.
Q. What was the purpose of that?
A. To make the public believe that we were trying to defend ourselves.

Q. Now I will not go into all the details of the battle, but were you there when those two boys were shot?

A. Present?

Q. Yes. A. No, I was not.

Q. How far away was you?

A. I can't tell you, something like four or five hundred yards; I was at the railroad track when they were shot.

Q. You didn't see it? A. I did not.

Q. You don't know personally who did it? A. I do not.

Q. What were you doing at that time, do you remember about the boy those people captured? A. Yes, sir.

Q. Tell about that.

A. Oscar Layton and I were walking up the track, after the tipple was captured and burning, and the crowd
1548 came out with someone in their midst, and I got up there and it was a boy.

Q. How old was he?

A. I would judge 18 or 19 years of age.

Q. Go ahead, without telling anybody's names.

A. Some were saying, "Let's hang him", and I went up and said, "Give him over, fellows, we will take him up where the rest of them are." And there was a man from Midland that run a hotel, he said, "No, we are going to hang him"! and I said, "No, you are not, we will not have anything like that done".

Q. Had you seen that fellow before? A. Yes, sir.

Q. Where? A. In Midland.

Q. What did you say to him at that time about what he did the night before? A. Who is this?

Q. Go on and tell the conversation.

[Q.] I took the boy up the hill and someone met me, came up and whispered to me they had just killed two men up this same valley we were going up, and I turned the boy loose and said, "You get out of here and don't come back to testify against us", and he said he wouldn't. Do you want me to continue?

Q. No. You went on over to where the fellows were shot?

A. Yes, sir.

Q. Were they dead at that time?

A. No, sir, the one armed man was dead, but the heavy set young man was getting his last breath.

1549 Q. By the way, who got the dynamite to blow up the tipple? A. Charles Pattie.

Q. Where? A. At the Bolen-Durnell supply house.

Q. Did the people that burned up the log cabin tell you about it? A. Yes, sir.

Q. What did they say?

A. John Menick and Clint Burris came to me the next night and said, "What will we do with those bodies", and I said, "I don't want to have anything to do with it, you can do as you please."

Q. Did either one of [you] ever tell you what they had done with them?

A. Yes, sir, Clint Burris said he and Menick burned the bodies up.

The Court: Has the state ever taken cognizance of this and prosecuted it?

Mr. Drinker: Yes, sir, they prosecuted two people, and they were acquitted on alibi. Paul Little represented the prosecution.

Mr. Grant: Mr. Drinker made a statement that Paul Little represented the prosecution. He had retired from office and a successor had been appointed who conducted the prosecution.

The Court: Merely out of curiosity, more than anything else, I asked that question.

Q. (By Mr. Drinker) Did you hear the testimony of Sam Thomas read when you came in here this morning?

A. I don't know who it was, I heard someone.

1550 Q. That was Sam Thomas. A. All right.

Q. Did Holt ever tell you anything about Sam Thomas and some other witness happened to be taken away?

A. Yes, sir.

Q. What did he tell you?

A. He said they had showed me some checks, and he said this money has been sent getting Bache witnesses out of the country, and he said, "I will not stand for it much longer, I am going to resign if it keeps up."

Q. The next day you went into Fort Smith, did you?

A. The next day from when?

Q. From the battle.

A. Yes, sir, or it may have been the day following, it was one or possibly two days.

Q. Who sent for you?

A. Pete Stewart [send] for me and Jim Slankard.

Q. Who was there?

A. Stewart and Webb Covington and Billy McLachlan.

Q. Did you go to see them?

A. Yes, sir, in a room in the Hotel Main.

Q. What did Covington and Stewart say about that?

Mr. Warrum: This conversation has not been fixed at all; it may have been after the suit was brought.

The Court: I understand it was a day or two after the 17th day of July.

The Witness: It was the next day.

The Court: Proceed.

1550a To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Tell what they said.

A. Stewart first done some talking, and he asked us in detail of the trouble and we told him briefly, and he said, "That is the best piece of work I ever heard of being done in my life", he said, "I congratulate you."

Q. Did Covington say anything—

Mr. Warrum: Now, if the court please, can I ask a preliminary question?

The Court: Very well.

Q. (By Mr. Warrum) Who was this Mr. Covington that you speak of? A. Webb Covington.

Q. Was he attorney for these people?

A. Yes, sir, for the United Mine Workers at that time.

Mr. Warrum: Then it is a privileged communication.

Mr. Drinker: He was one of the conspirators.

The Court: Of course if at this time there was any proceeding pending, and they were telling for the purpose of advising their counsel—but there don't appear to have been any litigation pending at that time.

Mr. Warrum: I judge from testimony they have introduced there was litigation pending all the time.

The Court: You may inquire of him.

Q. (By Mr. Warrum) Was Webb Covington attorney for the miners at that time? A. I think so.

1551 Q. He was attorney for District 21, and the local miners?

A. Yes, sir, and the district, representing the local miners.

Q. And you were up there to consult him as an attorney?

A. Not to consult him as an attorney.

Q. What were you there to do?

A. Up there at the request of Pete Stewart to tell what occurred at the battle.

Q. Were you talking with him as an attorney for Pete Stewart?

A. No, sir, just a man to man, in a general conversation.

By The Court:

Q. Was this man Covington a union man?

A. No, sir, he was not.

Q. Why should Covington have been there in a conversation of this kind at all? Did he want, as a lawyer, to learn the facts? A. I don't know.

Q. Were you requested to tell this in the presence of Covington, as attorney for the district?

A. Not as a request, I volunteered it, everything I said.

The Court: Proceed.

By Mr. Drinker:

Q. Tell what was said by Mr. Covington.

Mr. Warrum: I don't think I have made a formal objection. The defendants separately object to this on the ground that the question so far shows this was a privileged communication.

The Court: The court has not been able to ascertain—

Mr. Drinker: My colleague says he thinks I had better not press it.

The Court: If they went there to talk this matter over, to advise the lawyer for the district, it was confidential.

1552 Mr. Drinker: They went there to get his advise as to how to get these people out of the jurisdiction, and he gave them money and everything to ship them away.

The Court: Don't you testify; if it was that, it would be privileged.

Mr. Drinker: We will not press it further.

Th Court: I wish you would withdraw that statement you made about giving them money.

Mr. Drinker: I do withdraw it.

The Court: And the jury will not consider it.

Mr. Drinker: Don't consider it in any way.

The Court: Very well; proceed.

Mr. Drinker: I am sorry I said that, I did not mean to.

The Court: The jury will not consider it in any way at all.

By Mr. Drinker:

Q. Now, Mr. McNamara, after this conference did anybody give you any money?

A. Yes, sir.

Q. Who gave it to you?

A. Webb Covnigton.

Q. How much did he give you?

A. $25 apiece.

Q. And where did he tell you to go?

A. To Little Rock, Arkansas, to the Merchants Hotel, and register under assumed names, and he would be there in a week to see us.

Q. Did he come to see you—don't tell what was said?

A. Yes, sir.

Q. And how long did you stay there?

1553 A. We stayed there 7 days.

Q. And then where did you go?

A. To Hartford.

Q. How long did you stay there?

A. I don't know just exactly, something about a week, I believe around there, in and out of there.

Q. Did you go to McAlester?

A. Yes, sir.

Q. The District Board was meeting over there?

A. No, sir, not at that time, not for some time afterwards.

Q. You stayed around there several days then?

A. Quite a while.

Q. Did the Board meet over there?

A. Yes, sir.

Q. And did you go before the Board?

A. No, sir, I was not— the Board was in executice session, and I was on the outside.

Q. Who came out to give you communications from the Board? A. Pete Stewart.

Q. Was Mr. Covington there?

A. Yes, sir.

Q. Did he come out and talk to you?

A. Later, yes, sir.

Q. When he came out did he tell you what you were to do?

A. Yes, sir.

Q. What did he tell you? A. He told me,—

1554 Mr. Warrum: We object to this, this follows right along.

Mr. Drinker: He was not giving them legal advice.

The Court: They may have been getting this to advise them.

Mr. Drinker: He was giving instructions to the District Board.

The Court: I know, I would not press that.

To which and ruling of the court the plaintiffs at the time duly excepted and still except.

By Mr. Drinker:

Q. Did anybody give you any money
A. Pete Stewart gave me $250.
Q. And what did he tell you to do?
A. To get West and stay there until this case was all over.
Q. Did he tell you as to what compensation you would have? A. Yes, sir.
Q. What did he tell you?
A. He told me that every time, every day that we would lose during the trouble or this case, until it was settled, we would be paid Board Member wages and expenses or our time while we were away, at $8 a day, was the words he used.
Q. Now, skipping along, was anything of that kind said to you before you pleaded guilty here, as to what would happen to you in jail, as to your compensation?
A. Yes, sir.
Q. What was that? A. In the court room?
Q. Yes.

A. When I came in the court room, just before I was

1555 sentenced, Mr. Covington taken me into that room right there (indicating Judge's chambers) and asked me if I would plead guilty, and I told him no, I didn't want to.

Mr. Warrum: We objected to that as privileged.

Q. Then you went out West, did you?
A. Yes, sir.
Q. You were out there 3 months?
A. Yes, sir, over 3 months.
Q. Then you came back?
A. Yes, sir.

Q. And went to work? A. Yes, sir.
Q. And the trial came up in January?
A. Yes, sir.
Q. And you all pleaded guilty, did you?
A. Yes, sir.
Q. Now when you went out West, did Stewart tell you anything as to who was going to be the goat to take the blame for this stuff? A. Yes, sir.
Q. What did he tell you?
A. He said, "When you go West you stay there, and we will lay everything on you during the trial and in court," and he said, "We will assume that the district and national had nothing to do with this, you will be the man that will assume it all".
Q. Did he tell you he was going to lay the murder of those two fellows on you? A. No, sir, he did not.
1556 Q. When you came back from the West, what did you find as to what had been done, as to who was responsible for those murders?
A. I found that everybody in the country thought I had murdered those two men, and it was spread by the district organization all over the country that I murdered them. That is why—
Q. Never mind now. Now, we will go back. Now, you remember we located Mr. White and Mr. Ferns and these people in an automobile, to the best of your recollection, in the spring of 1916.

Mr. Warrum: Now, I object to a statement of that kind, he must direct the witness' attention to the testimony that he gave.

The Court: Very well, proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. What was said between you and Mr. White at that time?
A. I called Mr. White from the car and asked him if he remembered me, and I told him my name, and he said, "Yes I remember you". I said, "I would like to know when I will get my money that I was promised for this work", and he said, "I will take it up with the board as soon as I can."
Q. Did he say anything about Prairie Creek?
A. Yes, sir, we talked a little about the Prairie Creek trouble, and he said, "The only mistake that was made in that Prairie Creek trouble, if those two men had not murdered you

would not have had public sentiment against you, but on that it is against you a little bit here."

Q. Did you ever get paid any of this money?

A. I never got one dollar that I know of, outside of
1557 some money I got in McAlester one time, and it was put down as Board Member's wages. It was to pay my expenses, along about the time that Jim Slanker and I were dodging the law here, after the big fight or riot or whatever you call it on July 17th.

Q. Now, why did you go into this thing, what was your personal idea in getting mixed up in it?

A. At that time I was practically a boy, and possibly I had a little ambition to rise in the organization, because I worked hard.

Mr. Warrum: Defendants separately object to the statements being made by this witness—

The Court: Yes, his personal feelings.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

By Mr. Drinker:

Q. In connection with the attack on these properties, did the fact that the contract between the operators' association and the miners did not expire until the end of July instead of having it expire on the first of July, did that have anything whatever to do with the attack on the property?

A. No, sir.

Mr. Warrum: The defendants separately object to this question, and the evidence sought to be adduced thereby, as leading and suggestive and calling for an opinion and conclusion on the part of the witness.

The Court: He may state if this matter was talked over there, and what was said, but not merely his personal opinion.

Mr. Drinker: He is one of the defendants, and a mem-
1558 ber of this organization, and was their local agent, and I want to know if those people there had anything to do with it.

The Court: He can tell what was talked between himself and any other defendant here, but his own personal views of the matter are not competent.

Mr. Drinker: You see, your Honor, I am endeavoring to eliminate some things, and I want to show that a certain thing

did not influence him, and it is difficult to do that without asking whether it did or did not.

The Court: That may be true.

By the Court:

Q. Was that matter ever talked between you and anybody else? A. What matter is that?

Q. This contract, when it would expire?

A. No, sir, it never was.

Q. Never was talked over?

A. No, sir.

The Court: All right.

1559 Q. What company operated Prairie Creek No. 4 mine?

A. The Bache-Denman Company.

Q. Did you ever know of any other company operating it?

A. No, sir.

Q. What company operated Mammoth Vein No. 1 mine?

A. Bache-Denman.

Q. Did you ever know of any other company operating it?

A. No, sir.

Q. Did you ever hear it discussed that any other company operated it? A. I did not.

Q. What company operated the Hartford mine?

A. Hartford Central mine?

Q. Yes, the Hartford mine. What do you call the Hartford mine? A. Mammoth Vein?

Q. No, no the Hoffman mine.

A. The Hoffman mine?

Q. Yes, what do you call that?

A. I believe that was called No. 7.

Q. No. 7 what? A. No. 7 Central.

Q. Do you know what company operated the Dallas mine?

A. No, sir, I don't.

Q. Do you know what company operated the Coronado mine?

A. No, sir. I don't, not at the time I didn't.

Q. Did you ever hear of the Coronado mine by that name. that you remember?

1560 A. I don't think I did. I don't recall it if I did. You see, I didn't pay much attention to that stuff over at Huntington. I was in Hartford all the time.

Q. Did you ever hear any discussion about which companies of the Bache organization owned and operated which mines? A. No, sir, I didn't.

Q. Now, did the fact that Mr. Bache had made some preparations down there in April to put guards down there and

wires around, did that have anything to do with inducing the miners to attack him? A. No, sir, it did not.

Q. They would have attacked him just as quickly if there hadn't been any defense there?

A. Yes, sir. We were just waiting for the time to attack him when he started hoisting coal.

Q. What was the circumstance that you were watching for to start the battle of July 17th?

A. When he started shipping coal.

Q. Anything else? Was there anything else that you were waiting for besides his getting ready to hoist coal?

A. Not that I know of. Not that I remember.

Q. Were you interested in who was there protecting the property? A. Interested in it? No.

Q. I mean did it make any difference to you whether there were any people there to protect the property?

A. Guards, do you mean.

Q. Guards or officers or marshals or anything like that.

1561 A. As long as they had the United States marshals there we didn't want to get into any trouble with them, because we realized what that meant. As soon as they was withdrawn and he began to hoisting coal, that is when we made the attack on him.

Q. Did you ever testify in this case before?

A. No, sir, I never did.

Mr. Drinker: You may cross-examine.

Cross-Examination.

By Mr. Warrum:

Q. How old are you? A. Sir.

Mr. Warrum: Read the question.

(Question read to witness by the reporter).

A. Thirty-five years old.

Q. When did you join the union?

A. When I was a boy.

Q. How old were you?

A. I can't tell you just exactly. I must have been about ten or eleven years of age.

Q. And you remained in the union for how long?

A. Practically ever since?

Q. Are you in the union now?

A. No, sir, I am not.

Q. Well, when did you go out of the union?

A. When I left Arkansas.

Q. When was that?

A. It must have been about 1916.

1562 Q. Up to that time you were a miner and belonged to the union and held an office in the local that you spoke of? A. Yes, sir.

Q. And in 1916 you left Arkansas? A. Yes, sir.

Q. Where did you go?

A. I went to Joplin, Missouri.

Q. What did you do there?

A. I didn't do anything there. I went there with a man to go into business. We didn't arrange our business plants. and I went from there to St. Louis, Missouri.

Q. How long did you [state] at St. Louis?

A. Possibly about a year, I think, maybe two years.

Q. What did you do while you were at St. Louis?

A. I worked in a smelter, at St. Louis, for the American Zinc Company.

Q. Where do you go from there?

A. I went to Norton, Virginia.

Q. Norton, Virginia? A. Yes, sir.

Q. What did you do at Northon, Virginia?

A. I worked in the mines.

Q. As a union miner? A. No, sir.

Q. As a non-union miner? A. Yes, sir.

Q. Did you dig coal?

1563 A. Yes, sir.

Q. Were you a guard? A. No, sir.

Q. How long did you work at Norton?

A. I do not remember just how long I worked there. I worked in and out of there practically ever since.

Q. Where are you living now?

A. I am living up in the mountains from Norton.

Q. In Bluefield? A. No, sir.

Q. Have you done any guard work since you were away from here?

A. I never did in my life do guard work.

Q. But you worked in the mines as a non-union miner?

A. Yes, sir.

Q. Did you locate Mr. Bache or his attorneys and representatives and notify them of this testimony?

A. No, sir, I did not.

Q. When did they come to see you about it?

A. They sent a man—I suppose they sent that man—about something like a year ago. He found me up in the mines and asked me if my name was McNamara, and I told him yes. He said, "Are you the man that was in the Hartford

mine trouble?'' I told him I was. He said, ''Would you mind making a statement to Mr. Bache at Philadelphia''? I told him I would make a statement.

Q. Did you go to Philadelphia? A. Yes, sir.

Q. How long were you in Philadelphia?

1564 A. About a week or so. I don't remember just exactly.

Q. You made a statement to Mr. Bache at Philadelphia?

A. Yes, sir.

Q. Then you came down here from Norton, Virginia to testify, arriving here this morning?

A. Yes, sir, last night.

Q. Now, you testified as to the telephone communication that you had with Pete Stewart in which he told you to disperse the meeting? A. Yes, sir.

Q. Shortly before April 6th, 1914? A. Yes, sir.

Q. And you asked the telephone girl to listen?

A. Yes, sir.

Q. And you testified that you wanted her to listen because you thought there might be some law suit in which her evidence would be convenient? A. Yes, sir.

Q. What sort of a law suit did you have in contemplation then?

A. Because I realized in the very near future we were going over to do what we did, and we wanted to leave the impression with everybody possible that the district organization had nothing to do with it.

Q. Had you thought of that yourself?

A. We had talked about that quite often, Stewart and I.

Q. And did you know you would get Stewart here at Ft. Smith when you telephoned him?

A. I didn't telephone Stewart; Stewart telephoned me.

1565 Q. Did you know what Stewart would say before he telephoned you?

A. I didn't know what he would say. No, I didn't know. I had a pretty good idea about what he would say, but I didn't know positively.

Q. You didn't know whether he would tell you to disperse the meeting or hold the meeting or what he would say?

A. No, sir.

Q. And yet you asked the girl to listen to the conversation before you knew what the conversation would be in order that she might be a witness?

A. I did that, yes, sir.

Q. Did you realize that if Mr. Stewart had given you information at that time such as you say he gave you later on, that she would have made an unfortunate witness for you?

A. That is all right. She would testify to anything I wanted her to about that, because she was our ally.

Q. Oh? A. Yes.

Q. You knew she would testify to a lie?

A. I didn't say a lie. I said she would testify to what Pete Stewart said.

Q. When you stated to the jury that you knew she would testify to anything you wanted her to, you intended to be understood as stating that that young lady at the telephone exchange would perjure herself, if necessary, to serve your purpose? Is that right?

A. No, sir, that is not right.

1566 Q. What did you mean then, when you said she would testify to anything you wanted her?

A. Because you misinterpret it. I mean she would testify to what Stewart said.

Q. Suppose he had given you information which you say he gave you later? A. Yes, sir.

Q. Instead of telling you to disperse the meeting?

A. Yes, sir.

Q. Would she have testified to that?

A. Yes, sir, she would have testified to that.

Q. Now, you stated that you met Mr. White here at Ft. Smith? A. Yes, sir.

Q. At the special convention? A. Yes, sir.

Q. Where did you meet him first?

A. The first time I met him was in the lobby of the hotel.

Q. The Main Hotel? A. Yes, sir.

Q. Who introduced you to him? A. Nobody.

Q. Did you walk up to him and introduce yourself?

A. No. Jim Slankard told me in the convention hall that Mr. White wanted to make an appointment—wanted to see us and make an appointment at the Main Hotel.

Q. Did you walk up to him and introduce yourself?

A. No, sir, I did not.

1567 Q. Did he walk up to you and introduce himself?

A. He shook hands with us up in the parlor of the Main Hotel.

Q. Who was there when you shook hands?

A. Jim Slankard.

Q. Slankard is dead now?

A. Yes, sir. I have been told that.

Q. And you and he were alone when you met Mr. White?

A. Yes, sir.

Q. The National president? A. Yes, sir.
Q. Did Slankard say, "Mr. White, this is Mr. McNamara"? A. No, sir.
Q. What did Mr. White say?
A. He said, "How do you do, boys", and shook hands with Mr. [—] and Jim Slankard.
Q. He seemed to know Slankard and seemed to know you?
A. Yes, sir. Slankard told me he had talked to Mr. White that morning in the convention hall.
Q. What was the next thing Mr. White said?
A. Sir?
Q. What was the next thing Mr. White said, after he shook hands with you and said, "How do you do, boys"?
A. "How is things in Hartford?"
Q. Then what did you say?
A. I said, "All right, as far as I know."
Q. What was the next thing he said?
A. He said, "How is things in Prairie Creek?"
1568 Q. And you said what?
A. I said, "A little warm at Prairie Creek No. 4 mine."
Q. What did he say?
A. He said he had been informed of that.
Q. What was the next thing said in the conversation?
A. He said "I have been talking to Stewart".
Q. He told you he had been talking to Mr. Stewart?
A. Yes, sir.
Q. Was Stewart there? A. No, sir.
Q. Nobody there but you and Slankard and Mr. White?
A. Yes, sir.
Q. What then happened?
A. He told me—what happened then? I don't understand your meaning.
Q. Was anything else said at that time in that room?
A. Yes, sir.
Q. Was that downstairs that you had that conversation?
A. That was on the second floor in the parlor.
Q. What conversation did you have down in the lobby of the hotel? A. We never spoke a word.
Q. Did you go up at the same time he did on the elevator?
A. We went in the same elevator.
Q. Nothing was said until you got up in the room?
A. No, sir.
Q. Did he motion to you to come on and get on the elevator? A. He nodded his head as he went up.
1569 Q. Oh, he nodded his head to you?
A. Yes, sir.

Q. He got on the elevator and you [too] got on with him?
A. Yes, sir.
Q. Nothing was said until you got into the room?
A. No, sir.
Q. Did he seem to be mysterious about it?
A. Not very much.
Q. You hadn't said, "Mr. White, I desire to meet you"?
A. No, sir.
Q. Or "My name is so and so"?
A. No, sir.
Q. Mr. Slankard didn't introduce you?
A. No, sir.
Q. So you got up there in that room?
A. Yes, sir.
Q. How long were you in that room?
A. We must have been there fifteen minutes, anyway; not longer than that.
Q. No one there but you and Slankard and Mr. White?
A. That is all.
Q. What did Mr. White say after you got in there, after the conversation that you have related?
A. White said, "I have been talking to Mr. Stewart about the Bache-Denman trouble."
Q. Yes? A. Yes.
1570 Q. Is that all? A. Yes.
Q. Is that the end of the conversation?
A. No. You didn't ask me to repeat the rest of it. Shall I repeat the conversation?
Q. Yes.
A. He said, "I have been talking to Stewart about the Bache-Denman trouble". He says, "Stewart informs me that they can produce coal", something to that effect. He says,—let me get it straight, because I don't want to—
Q. How is that? I beg your pardon. What is that?
A. He said, "If Bache-Denman is permitted to ship scab dug coal on the market" he says, "it is going to force the other operators to close their mines down or scab their mines because they can't meet the competition", or words to that effect.
Q. What did you say in answer to that?
A. I didn't say a word.
Q. Did Mr. Slankard say anything in reply to that observation?
A. No, sir, he didn't say a word.
Q. Then he told you he didn't want you to say anything to the boys down there because he was trying to keep the national organization out of it?

A. No, sir. He said, "I want you to go down there and tell them what I told you, but don't tell them I told you".

Q. Ah, you were to tell the men down there what he told you? A. Yes, sir.

Q. But you were not to tell them he had said it?

1571 A. No, sir.

Q. Who were you to quote as saying that?

A. Nobody. I understood from Mr. White that I was to tell the men what he said, but I was not to tell them he told me to say it.

Q. What was it you were not to tell the men and what did you tell them?

A. I told the men we wouldn't do anything until Bache begun producing coal.

Q. Not to do anything until Bache began producing coal?

A. Yes, sir.

Q. What were they to do then?

A. They were to stop them.

Q. He had told you that?

A. Yes, sir.

Q. Not to do anything until they began producing coal, and then to stop them?

A. You understand, Mr. White didn't tell us to tell his conversation. He told us to tell the men not to do anything until Bache began producing coal, and then it was time to act, or words to that effect.

Q. Was that all the conversation you had with Mr. White?

A. No, sir.

Q. Then you came down? A. Yes, sir.

Q. Did you come down together?

A. No, sir, we had more conversation. He said, "I

1572 don't want the National organization mixed up in this, because we have got a big burden now. We have got West Virginia and Colorado, and it is a big expense, and we don't want any more expense than Arkansas." He said, "You boys have taken care of this so far yourselves, now it is up to you."

Q. Was that the end of the conversation?

A. Yes, sir.

Q. Then did you come downstairs?

A. Yes, sir, then we come downstairs.

Q. Did he ask you to wait until he got downstairs, before you came out of the room to take the elevator?

A. Yes, sir. He said, "Let me go down first, on the first elevator, and you boys come later."

Q. He seemed to be kind of slinking and furtive about it, and afraid somebody would see him with you?

A. Yes, sir, in a sense. He impressed me that he didn't want nobody to see us together.

Q. Now, the next you saw of Mr. White was when he was in the rear of an automobile down at Hartford?

A. Yes, sir.

Q. When was that?

A. That was in the spring of the year, after I came out of prison.

Q. Well, what year would that be?

A. That must have been 1916, to the best of my knowledge.

Q. Who was with him, do you know?

A. Jim Ferns was with him.

1573 Q. Was anyone else with him?

A. Yes, sir, there was other men in the car.

Q. Can you identify any of them?

A. I don't believe I can, because I didn't know them, but I understood there was someone there from the national organization.

Q. You don't know any of the names?

A. I do not, no, sir.

Q. Did you ask about any of their names?

A. No, sir.

Q. Did you shake hands with them?

A. No, sir, nobody but Mr. White.

Q. You didn't shake hands with Mr. Ferns?

A. No, sir.

Q. Or any other members of the crowd?

A. I did not.

Q. Just Mr. White? A. Yes, sir.

Q. And you told him you wanted to get your money, or would like to know when you were going to get the money?

A. I asked him if he was going to see about me getting my money that they owed me. He said, "I will take that up as soon as I return." I believe those were his words.

Q. Did you ever get any money from him?

A. I never got a nickel from nobody.

Q. You had no arrangement to get any money from him, did you? A. From him?

Q. Yes? A. Yes.

1574 Q. You failed to testify that on direct examination, didn't you? Had you overlooked that?

A. Possibly I had forgotten that, yes, sir.

Q. You had an arrangement to get money from him?

A. Yes, sir.

Q. When did you make that arrangement with Mr. White?

A. When we were talking in the hotel.

Q. When you were talking in the hotel?

A. Yes, sir.

Q. In May, 1914? That was part of the conversation upstairs, was it? A. Yes.

Q. That was part of the conversation that you testified to a moment ago?

A. I can tell you what was said upstairs. I don't know just what you are alluding to.

Q. I am alluding to the conversation. When was it you made an arrangement with Mr. White to get money from him?

A. In the Hotel Main, when I was talking with him.

Q. That was the time the special convention you testified to, when you met him in the lobby and went upstairs with him? A. Yes, sir, that was the time.

Q. What arrangement did you have to get money from him?

A. Mr. White, when he rose up to go, said, "Now, you boys will not lose a day, and your expenses will be paid for every day you are in this trouble".

1575 Q. What trouble were you in?

A. It was the trouble I went to the penitentiary for.

Q. In May, 1914?

A. Oh, I didn't understand your question.

Q. Oh, of course you didn't understand me.

A. It was the trouble we had here.

Q. When you saw him in the automobile next spring—

A. No, sir.

Q. I am calling your attention to the time you saw him in the automobile next spring? A. All right.

Q. You asked him for money for the time you had been in prison. You hadn't been sent to the penitentiary in May, 1914?

A. That was not in May, 1914. I told you that after I came out of prison was when I saw White in the automobile.

Q. But, Mr. McNamara, I asked you when you had [you] arrangement with Mr. White to get money from him and you told me at the time of the special convention, May 18th to 23rd, 1914, at Ft. Smith? A. No, sir.

Q. Did you have any arrangements to get money from him then?

A. It was generally understood that the national organization was going to pay us for the time we lost. It was generally understood we were going to be paid, and I thought the only man to go to would be White to get it, because he was the national president.

Q. You knew that the district was managing that fight?

A. I know they did [they did] not.

Q. You were captain down there, and you know the
1576 district paid all the relief? A. Yes, sir.

Q. You knew it was a local strike, and the district managed it, didn't you?

A. The district paid me money up here at Ft. Smith for my expenses.

Q. Didn't the district have charge of that strike and pay the relief to the men there?

A. No, sir. They paid some relief, but I don't know whether the national paid the money to the district or not, but what money I got I got from the district.

Q. You got all the money from the district?

A. Yes, sir.

Q. Now, you testified to a conversation you had with reference to the shooting in Frogtown?

A. Yes, sir.

Q. You say you were there on the evening it was shot up?

A. Yes, sir.

Q. What evening was that?

A. That was the evening after the day we held the meeting behind the Central store in Hartford.

A. That does not identify it the way I would like to have it identified. How long was it before the big battle?

A. A year or so before.

Q. When was the big battle, with reference to the day of the week? A. I don't know.

Q. Friday, was it not? A. I don't know.

1577 Q. In any event, it was the night the people fled from Frogtown to Huntington?

A. That was the night they shot up Frogtown.

Q. And you were out at Frogtown?

A. I was at Frogtown.

Q. And you were sitting down there with Mr. Gluck and Mr. Slankard and some others?

A. Quite a number of others.

Q. Who were they?

A. Oscar Layton, John Mannick, Blint Burris. I don't just recall any others.

Q. And they said they would go out and shoot up the little village of Frogtown, so as to create some public feeling on the subject is that right?

A. Yes, sir.

Q. What time was it that you had that conversation?

A. That was after dark.

Q. After dark? A. Yes, sir.

Q. Well, about what hour?
A. I don't know just exactly what hour. It was after dark.
Q. How long had you been out there?
A. Well, I don't know that. We had been out there, we had left Hartford before dark and got there.
Q. That was in July? A. Yes, sir.
Q. Can you approximate the time you got there?
1578 No sir, I cannot. I know we got there before dark.
Q. You got there before that conversation occurred?
A. I don't know what time it was. We had been talking there together, and the time passed and I don't know what it was, but it must have been an hour or so after dark, not over an hour.
Q. Had Mr. Slankard been with you all the time and Clin Burris and Mr. Layton?
A. We were all sitting there together, just like these men are sitting there (indicating the jury).
Q. How long had you been sitting there?
A. I don't know exactly. I can't tell you just exactly.
Q. Was it an hour?
A. Some of the people had gone to their houses to get a drink or something like that. It may have been an hour or an hour and a half or two hours, or maybe three hours.
Q. All at once they said it was time they should go out and shoot up the town so they could create some public sentiment?
A. No, sir.
Q. What did they say?
A. They were talking about what we were going to do in a few days. We had already practically arranged that.
Q. What did they say with reference to shooting up Frogtown that night?
A. Jim Slankard said, "We will go out and start a little fun."
Q. Start a little fuss? A. A little fun.
Q. A little fun?
1579 A. Yes, sir. They went over and then they came back.
Q. Did you ask him what the fun would be?
A. No, sir. We knowed what it was going to be. We knowed what he was going to do.
Q. You had already talked about it?
A. We knew what he was going to do.
Q. Did you know it by any statement he had made or anyone else had made?
A. Fun meant they were going to go out and start shooting around, and leave the impression that the guards had come down there and done it, because we had rumors they

were going to do that, and we intended to do that so as to carry out these rumors.

Q. You don't mean to tell these jurors that you had rumors of that? What you really [means] is that you circulated rumors yourself, that they would do it? Isn't that right?

A. No, sir, I didn't.

Q. Do you mean to tell this jury that rumors were out that you hadn't started yourself? That the miners hadn't started, that they would shoot up Frogtown?

A. Yes, sir. I know that they started. John Manick and Clin Burris and a man in Frogtown come to Hartford and said that the guards in the Bache camp were coming down there and shoot up the town, and then were going to come on up and shoot up the picnic on the 27th, or whatever day it was, in Hartford.

Q. That is what I say, the rumors had been started by the union miners themselves? A. Yes, sir.

1580 Q. And, of course, you knew about the rumors?

A. Yes, sir.

Q. Because you had helped to start them? A. Yes, sir.

Q. When they went out to shoot up Frogtown, they were simply trying to carry out those rumors? A. Yes, sir.

Q. To make a background to justify them?

A. Yes, sir. They were trying to carry out the rumors to leave a false impression that it was the guards that done it. That is why the shooting was done.

Q. And you helped to plan that with them?

A. Not me. I didn't help to plan it.

Q. You didn't even carry a gun on the day of the big battle, did you? A. Yes, I did.

Q. Were you captain the day of the big battle?

A. Practically all the time.

Q. And you helped to plan with Manick the shooting at the time of the big battle? A. Yes, sir.

Q. You were head of that? A. In a sense, yes, sir.

Q. And you were present with a gun in your hand?

A. Yes, sir.

Q. And you did some shooting? A. Yes, sir.

1581 Q. Now, going back to Frogtown, how long was it after they went out until this shooting occurred?

A. Oh, just about—well, I would say from 1: to three hours. I don't know exactly.

Q. You think they were gone from one to three hours before there was any shooting?

A. Oh. You mean how long Slankard was gone?

Q. Yes. A. About ten minutes.

Q. About ten minutes, and then they came back again?
A. Yes, sir.
Q. Did you hear any bullets?
A. They shot in the air. They said that when they come back.
Q. And were you sitting with the rest of them when the shooting occurred? A. Yes, sir.
Q. Where were you sitting when the shooting occurred?
A. Right where they left us.
Q. Could you state where that was?
A. On a ditch. Just as illustration, you [raun] a ditch up through here (indicating). We were sitting on the bank of that.
Q. Sitting along the bank of the ditch? A. Yes, sir.
Q. Was that on the edge of Frogtown?
A. That was about the center of Frogtown.
Q. About the center of Frogtown?
A. Frogtown comes together like that (indicating).
1582 This road goes to Hartford, and this road goes to Midland. Here is the track. We were sitting right here on this ditch.
Q. When they were gone ten minutes the shooting began?
A. Yes, sir.
Q. You didn't hear any bullest whistle?
A. They went up toward Midland to do it.
Q. You didn't hear any bullets whistling through the town, did you?
A. I never paid much attention to that. I knowed what they were going to do.
Q. They were not even shooting in the town? They were shooting up in the air toward Midland? A. Yes, sir.
Q. Then you didn't hear any bullets? A. No, sir.
Q. You didn't see any houses struck?
A. No, sir.
Q. Had you arranged with the women and children, in order to carry out this pretense, that they should come out from their homes, some in their night clothes and otherwise, and go up the road and run to Hartford?
A. John Manick and Clint Burris arranged that.
Q. You know that they had arranged that with women and children around there, do you?
A. They left the crowd and went to do that. They said what they were going to do.

Q. They would not probably have had time in ten
1583 minutes to do that. They must have made that arrangement before hand, don't you think?

A. I don't know just what you are alluding to. I know about the time the shots were fired. Sometime after that the woman and children come down the road and went up toward Hartford.

Q. None of you that were sitting there, and none of the union miners sitting with you said anything to them? None of them said "Now, there is no use to run over to Hartford. We will take care of you. Don't get scared about this. Go back home and go to bed", or anything of that kind?

A. We all knowed what they was doing.

Q. They had arrranged that with the women and children?

A. Certainly. John Manick and Clint Burris and that bunch was there looking after that. I think they went over to do that, and then they came back again.

Q. Did you see any of them traveling along the road?

A. I saw some of them go by.

Q. Did you see old Pete Nichols wheeling his crippled grandchild? A. Who?

Q. Pete Nichols, you know him, don't you?

A. I don't know the man. I may know him, but I don't recall his name.

Q. Did you see an old man wheeling his crippled grandchild in a wheel chair on the road to Hartford?

A. No, sir, I didn't.

Q. You saw women running down that road?

A. I didn't see them running. I saw them walking, women, children and men.

1584 Q. Taking their time?

A. Yes, sir.

Q. Were any of them in their night clothes?

A. I didn't see them. They left up from the far end of town. Them women that were going in their night clothes was up in the far end of town.

Q. You know John Wilkinson, don't you?

A. Yes, sir. He used to be president of the district?

Q. Yes. He was president of District 21 in 1915 and 1916?

A. Yes, I know him.

Q. Did you write letters to him demanding money from him?

A. Demanding money? No, I didn't. I requested him to send me some money to stay out there, when I was in the West, and he didn't answer my letters. That is why I came back.

Q. Didn't you write him letters demanding money, stating that if he didn't send you money you were going to blow him up, or something like that?

A. No, sir, I didn't.

Q. Or blow District 21 up?

A. No, sir, I didn't. I have never been in District 21 for five years, and never wrote to nobody back here in that time.

Q. Did you ever write him from East St. Louis when you were there?

A. Possibly I might have. I wouldn't say I didn't.

Q. Demanding money?

A. Not demanding money, never a nickel, (rising) you had a man up there shadowing me in East St. Louis.

The Court: Sit down.

1585 A. (Continuing) You had a man up there shadowing me. He might have wrote a letter and signed my name to it, but I didn't.

Q. You didn't write any letters at all?

A. I don't say I didn't write any letter. I might have wrote and asked about it, but not demanding any money. I never demanded a nickel off of anybody in my life.

Q. Did you write letters to John Wilkinson, threatening to sue him if he didn't pay you some money, or send you some money?

A. I don't know, I might have wrote him. I believe I wrote a letter to John Wilkinson, but that was not demanding money. That was my legal right.

Q. Did you threaten to sue District 21 if they didn't pay you?

A. I don't recall that. As I said before, I wrote people here demanding—not demanding, but asking, I believe I did ask him to send me some money, and I never got no money. Since you speak of it, it come back to my mind, but I had forgotten it, but not demanding money.

Mr. Warrum: That is all.

Redirect Examniation

By Mr. Drinker:

Q. Do you remember meeting Pleas Baker out there that night? A. Yes, sir.

The Court: Out there what night?

Mr. Drinker: He is one of the other witnesses. I just wanted to connect him up.

Q. The night before the battle. Do you remember you stopped him on the road?

1586 A. Yes, sir.

Q. They were in an automobile, and you told them to go on? A. Yes, sir.

Q. During the battle what direction did you shoot in?

A. I shot up in the air most of the time.

Q. Did you aim at anybody?

A. I did not.

Q. At the time you had this talk with Mr. White you have told about before that the injunction had been made permanent here? A. Yes, sir.

Q. And was in effect? A. Yes, sir.

Q. Precluding the mine workers and everybody else from encouraging that strike?

A. Yes, sir.

Q. Mr. McNamara, this telephone girl that you were talking about, what became of her name shortly after that?

A. I married her.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

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1587 WILLIAM J. GOATCHER, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Give your name to the reporter?

A. William J. Goatcher.

Q. Your occupation? A. Farmer.

Q. Where do you live?

A. Three miles north of Poteau.

Q. Where were you living in 1914?

A. I lived down near Midland, between Midland and Huntington.

Q. What were you doing there?

A. Farming.

Q. Were you running a farm there near Huntington during the time of this trouble on the Bache-Denman Company's property. A. Yes, sir.

Q. Did you know a man named William H. Cluck?

A. Yes, sir.

Q. Is he a union miner? A. Yes, sir.

Q. Did you ever have any conversation with him at any time subsequent to the trouble that took place on the Bache-Denman Coal property?

A. Yes, sir.

Q. What was it?

A. He come to my place and wanted me to help him
1588 tie up some oats on Sunday morning. He had a lot of oats cut down, and he said he had to go over to Hartford on Monday, and wanted me to help him tie them up on Sunday. He said he had to go over there to distribute the money. He was the clerk or secretary, or anyhow he handled the money and paid the aid money.

Q. What aid money? A. To the miners.

Q. He was the paying secretary of the local union?

A. Yes, sir.

Q. Did you help him tie up the oats?

A. Yes, sir, I helped him that day.

Q. You worked along with him that day?

A. Yes, sir.

Q. Did you have any conversation with him about that trouble?

A. We talked about it right smart along during the day, but I don't remember all that was said.

Q. Did you have any conversation with him about Frogtown? A. Yes, sir.

Q. What did he say?

A. [Were] were talking about that. He said him and Slankard crawled up in a ravine and shot in there to cause a disturbance on account of keeping down the impression, or making it appear that non-union men done the work.

Q. Did he say anything about the kind of guns they used?

A. No. 10 shot guns, he said, to make as big a racket as they could.

Mr. Lucas: You may cross-examine.

1589 The Court: Any questions?

Cross-Examination

By Mr. Warrum:

Q. Who was it that told you that?

A. Uncle Billy Cluck.

Q. William Gluck?

A. Yes, sir.

Q. G-l-u-c-k?

A. C-l-u-c-k.

Q. When did he tell you that?

A. Well, it was the next year afterward.

Q. A year later? A. Yes, sir.
Q. He told you that he and Slankard had slipped up [illegible] ravine that night and shot up into the town of Frogtown?
A. Yes, sir.
Q. The two of them?
A. Yes, sir.
Q. With shot guns?
A. Yes, sir, No. 10 shot guns.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

Mr. Drinker: We may have to recall this witness. We will perhaps eliminate a good deal from now on, but I want to reserve the right to recall him if necessary.

1590 On page 1462 of the old record, from the United Mine Workers Journal of July 23rd, 1914, page 7, at the bottom of the third column, I wish to offer the following article:

"From Arkansas.

"The Strike is Still On.

"I want space in the Journal to tell of some of the conditions existing at Prairie Creek No. 4.

"We had a little trouble here on Saturday night July 12th. Some of the scabs got out of the bull pen and started to shoot up camp Beulah, at the Mammoth Mine. There was quite a number of shots fired, but none of the miners or their families were injured.

"The men are firm and out to win. Everything has been quit since Sunday night. Our District President and some of the boys have been on trial over an injunction.

"We are asking all men to stay away from here until the trouble is settled, as it is supposed they have agents out looking for men. Will you give the news through the Journal.

"We have the regular type of scabs at this place.

"W. H. CLUCK."

Mr. Drinker: If the court please, this testimony has modified our [plants] to some extent. We think we may be able to eliminate a good deal now, and if your Honor would adjourn at this time until 2:00 o'clock we could apply that time in

seeing what we can do in the way of introducing testimony, probably to better advantage than by introducing unnecessary testimony at this time.

The Court: Very well. We may gain some time by that.

(Whereupon, at 12:10 P. M., after the usual admonition by the court to the jury, a recess was taken until 2:00 o'clock P. M.)

1591 After Recess. 2 P. M.

The Court: The jury is present. Proceed with the case.

Mr. McDonough: We will read from International Executive Board, United Mine Workers of America, May 4th to 8th, 1914, from page 3.

Mr. Warrum: Defendants object to the introduction of the matter offered for the reason that under the opinion of the Supreme Court it does not prove any issue.

The Court: Proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. McDonough (reading): "Indianapolis, Monday, May 4th, 1914.

Morning Session.

The meeting of the International Executive Board was called to order at 10:00 o'clock a. m., President John P. White in the chair.

Absent: Board Members Haggerty, Lawson, Rees and Harrison.

President White: Another matter I want to mention to the Board before we adjourn. I have a few matters here I wanted to state, in order that my action might be known to the Board officially and the Board would have the information that they ought to have in a brief way. Several weeks ago, or rather, more than two months ago, I guess it was, a suit was instituted in the southwest by a man by the name of Bache, a member of the Bache-Denman Coal Company, against the President of the Southwestern Interstate Coal Operators' Association, Charles S. Keith, in which he demanded an
1592 accounting of the funds of the Southwestern Coal Operators' Association. Page 92:

Well, that was all the object this man Bache had in mind, was to procure the information. Page 93:

When he secured this information, he immediately went down to Arkansas and started to run his mine non-union. The boys simply marched in on him in a day down there and kicked his Colorado guards out of there and broke their jaws and put the flag of the United Mine Workers on top of the tipple and pulled the fires out of the boilers, and that was all there was to it, and the mines have been idle in there ever since. I do not say that our boys did this, but I mean the people from all through that country marched in and stopped the work, and when the guards offered resistance, several of them were roughly handled, but no lives lost, as I understand it."

Now, we wish to read from the United Mine Workers of America Convention proceedings, Special District Convention, District 21, of May, 1914.

Mr. Warrum: Is that the District 21 convention?

Mr. McDonough: Yes, sir.

Mr. Warrum: Now, that has been read from already, if the court please. It was introduced in evidence, from my notes, the convention proceedings of May, 1914, and they read from pages 12, 15 and 16, and I have marked "Cross-Examination", and I don't know the purpose of reading it again.

Mr. Drinker: We want to read it on another subject. That was merely on the subject of competition. This is a different subject.

1593 The Court: Very well.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. McDonough (reading): "International President John P. White: Mr. Chairman and Fellow Mine Workers: I have journeyed quite a long ways to be with you on this occasion, and it is not my intention to take up but a few moments of your time. I realize that you are here under heavy expense and have been convened in extraordinary session, and therefore, will not burden you with any extended speech. I am glad, however, and thankful, for the privilege as well as the honor of being with you on this occasion and saying a few words in a general way about the conditions of our organization. I have not as broad an acquaintance with the miners of District 21 as I have with some of the other Districts, however, I have known of the value and worth of the organization of District 21 for many years. We have watched your

struggles with a good deal of [price] and satisfaction and have admired you for the splendid fighting pualities that you posessed. I recall your early struggles for the establishment of our union, and the splendid fight you maintained to perfectly establish our principles. Our organization now has become a very vast institution. It has extended its influence now to almost every coal digging field of this country. Possibly at no time in the period of the United Mine Workers have we ever been so bitterly opposed by the opposition as we have been in the last eighteen months or two years. This is probably due to the fact that in the great non-union fields of this country for many years our organization has to
1594 great extent, at least, lapsed into indifference and failed to extend its lines into these rick coal producing countries that are of such prime importance to the organized Districts of the country.

Last year about this time we were engaged in a tremendous struggle in the West Virginia coal field. More than twelve years ago the operators of that state succeeded in driving out practically all of the organization, in 1902 and 1903. The operators felt that they were immune from the influence of our movement, and have banked on us never getting in there, and an organizer could scarcely get outside of the City of Charleston to do business for the organization, but after a strike lasting nearly eighteen months, in which many of our people and their sympathizing freinds and families suffered all the privations incident to civil war, some lost their lives, others suffered imprisonment and hardships untold, we succeeded in dragging down the tremendous opposition and today as a result of that fight more than forty thousand men can avail themselves of the privileges of our union, and time will demonstrate that the effort made in West Virginia will bear rich fruit for our organization.

In the great struggle that is now engaging the attention of the American people in Colorado, you know the Mine Workers of Colorado in the northern section have been on strike for four years and almost two months. They are fighting a battle for the existence of their homes and firesides as well as the right to belong to our union. This fight was inaugurated one year before I became your International President,
1595 therefore, it was not of my making, but it was handed down to me as one of the heirlooms by the preceding administration. I have had such a high regard for the Colorado miners that I have gone the full limit to try to protect them against their oppression. Colorado is the last state

West of the Mississippi river where—the only state West of the Mississippi river, rather, where we have not established the organization. To bring about the results that we desired in Colorado it became necessary to engage in a campaign of organization in the Southern Colorado coal field. There, as in West Virginia, your organization was driven out of there in 1903 and completely routed. The operators felt secure that the union would never come back to bother them any more, however, they looked on with deep suspicion, at the little handful of men in the Northern Colorado coal field, who had up to this time maintained an organization. They decreed, if the state was going to be free from the influence of the United Mine Workers, that it would be necessary to drive out the last vestige of the organization in the Northern coal field. Now, a great many of you men realize how much the organization of Colorado is to the progress of the Southwest. The great energies of this movement have been spent in recent years, in my mind, in the strong organized districts. We have been engaged in strife and internal warfare among ourselves in the great organized districts so much that the operators in the non-union fields had their own way with everything, so in order to bring about a complete change in our policy, and to extend the lines of our movement into
1596 these fields, we had to change that policy, and find some means to enter these fields and get in touch with the men mining coal in these sections. It was not light undertaking to establish the union in Colorado. The men who went down there to represent your organization in an official capacity encountered a great deal of hardship and subjected themselves to great dangers. However, the union was established in the Southern Colorado coal field. We opened offices in Trinidad, Walsenberg and Florence and elsewhere, and at an opportune time sought a conference with the employers of these mines. They ignored us completely, every appeal that we made, and simply refused to meet with anyone, and finally in last September the miners called a convention in Trindidad, and they formulated policies of their own making, which was put before the operators, and the operators were given additional time of more than one week, in order to prevent a strike, and to give them time to meet with the representatives of the men and try to prevent what has since proven to be the greatest industrial conflict that has ever characterized our country. They refused, however, and the men in that field suspended work and marched out of their camp, where they had lived in miserable conditions, and went to the homes furnished them by the United Mine Workers, the little

tented homes in the foothills of the Rockies, and during all that severe winter, and Colorado has had a severe winter, those people have endured all of the hardships incident, as I said before, to a civil war. We have spent vast sums
1597 of money, because we have been fighting the greatest financial interests of this country. Hundreds of armed gun men have been employed to suppress the miners, but in that they failed, notwithstanding they murdered a number of our good people, and the Colorado miner is fighting valiantly for the principles of our organization. The recent outrages at Ludlow and elsewhere have turned the attention of the entire country. The situation now is in the hands of the Federal troops. After our tent city had been destroyed and several of our striking men workers, and a large number of their wives and little innocents, were murdered and burned and slaughtered in the awfullest manner known to society—now, the State of Colorado is bankrupt, they have held a special session of the Legislature that adjourned the other day, and the only thing they did was to appropriate one million dollars to further this warfare against organized labor in that state. We have stood by these men, hoping to induce the Federal Government to take a hand in that battle and bring about a settlement. Every attempt that we have made has proven fruitless, or practically of no result. We have importuned the President of the United States to close those mines and stop them from trying to operate them in order that our people might not be slaughtered by the gun men. The latest information from Colorado is to the effect that they are raising enough money for immediate purposes, to again put the militia, and the gun men who compose the most of the militia now, back into those fields to act as scab helpers, and
1598 murder people if necessary. To my mind, if this is done, it will mean a repetition of the horrors of Ludlow and other camps that have been outraged by these desperados. It seems to me that we are approaching a crisis in the industrial affairs of our nation. We look upon the Colorado fight as the last great stand of the interests. If the Mine Workers of this country can succeed in overcoming the financial interests in Colorado it will augur well for their policies, and for the union in the other non-union fields about to be encountered by the organization.

We have started an extensive campaign with speakers all through the Eastern states to explain this situation to the American people. Our International Executive Board has instructed the President to arrange for the convening of a Labor Congress in Washington, D. C., sometime in the fall,

by which we hope to have every International union in this country, every central labor organization and every Federal union represented in a large labor gathering. We hope to so impress Congress with the necessity for prompt action that we can end the rule of government by assassination and government by gun men. It seems to me that this is going to be absolutely necessary before the workingman is going to get a square deal. This ought to convince [man is going to get a square deal]. The corporations have studied out a policy of their own. This ought to convince the United Mine Workers who seem to doubt the policy of their organization. It is not an uncommon thing at times to hear men who hold membership in our union giving expression to dire sentiments and statements that our movement is no longer a fighting organization. That [—] is not accomplishing anything in the interests of humanity. The fact of the matter is you can search the broad horizon of the world of labor, and there is no organization more militant than the United Mine Workers of America. Wherever these questions are raised, wherever these powerful interests are trying to prevent the men of the mines from securing a square deal, this organization is found fighting for the establishment of its principles. In West Virginia, in Colorado, in Kentucky and Tennessee, in Maryland and sections of Pennsylvania, from far off Vancouver Island, this organization has followed out this line, and has carried the principles of the organization to these fields where the men stood in so much need. I say that these great powerful interests that I have referred to have been constantly preparing and are maintaining traveling armed armies, maintained machine guns, men of desperate character, recruiting from the barrel houses of the city and the slums, where the sun never shines upon the manhood of their lives, whose sole object is to murder if necessary and crush out the ideals of the men of the mines. And unless we can get our Federal government to prevent such practices in the future, this warfare must go on in its uneven way. We are hopeful, however, that the dead and dying, and the awful slaughter of the innocent in Colorado, will prove not to have been in vain. I cannot believe that these eleven little children who were murdered like rats in a trap, their good mothers died with them, and their fathers that suffered a martyr's death, have died in vain. I cannot believe that the publicity that we will be able to give to this awful massacre of the innocents will be made in vain, that out of this awful carnage of death, murder and destruction there will not come a brighter day to the Mine Workers of this

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country. Possibly I am too optimistic, but I cannot help but believe that an organization that is fighting such a tremendous battle for human rights, such as the United Mine Workers are fighting, will have to fight that battle in vain. Our movement, as I said a while ago, has grown to great proportions. We have within the last two years organized 530 new local unions of the United Mine Workers, and we have added 127,000 new members. We now number nearly 450,000 members, easily we could influence more than 500,000 men who mine coal in the United States. We are now engaged in the establishment of wage agreements throughout the central competitive field, and in a few more weeks the Mine Workers of the Southwest will be required to pass upon a wage scale for the future period of their contract. I want to say that industrial conditions this spring are very bad. Thousands of men are out of employment. Our enemies in the non-union fields and elsewhere hope and pray that this organization will become involved in a gigantic struggle for conditions and improvements that they know they cannot get, owing to these conditions that we have referred to, and thus we would expend our energies and money in that way, and the strike in Colorado and elsewhere would be sacrificed and the men return to the mines. The non-union [markets] who have enjoyed your markets for years, while you have been suspended to adjust your wage agreements, are bitterly
1601 disappointed. They have a number of emissaries in your own ranks, by the way, who are constantly attacking the policy of the union, and who are standing on the house tops, as it were, trying to inspire the men with false hopes, trying to get them to engage in an industrial conflict, when it would spell defeat to all concerned, and tear down the temple on ourselves, but they are going to be disappointed. The clouds are clearing up, and in a few more weeks, if I mistake not, the sun will be shining bright, and our organization will become more active and more effective in the prosecution of its agreements in Colorado and elsewhere.

We cannot surrender the strike in Colorado. You men in the Southwest will appreciate more than any other class of men the establishment of the union in Colorado, and New Mexico, for with the fall of Colorado, New Mexico must fall in line.

In Alabama, another important non-union coal field, rich in productive powers, great in oppression, the interests down there, just a few days ago, endeavoring to bring back our old time enemy Governor ....., to put him back in the

governor's seat. They went to a great deal of expense and trouble to bring this modern despot back in the governor's chair of that state, and labor got active, and we succeeded in defeating that gentleman by a good, round majority, a complete rebuke to the interests that were trying to establish him again in the governor's chair of that state. This simply illustrates that all along the line these powerful interests are watching their cues to prevent the United Mine Work-
1602 ers from establishing their organization. West Virginia now has more than 80,000 men who mine coal for a livelihood. We have not given up establishing our organization in that field. We have just halted the campaign in West Virginia to give our attention to Colorado. We felt that the men of the Southwest deserved that measure of protection that we thought it would probably give them to establish an organization in Colorado.

Our work in West Virginia has brought considerable relief to the men there. A few years ago on Cabin Creek, it was similar to that in Colorado, but they have now a more enlightened policy. Places where organizers could not go a few years ago, they can go now with absolute safety. They can go up and down the Creek. In the Paint Creek district of West Virginia we have an absolute agreement there, and a check off and all the privileges of the state law, such as we have in any other state, with a check-weighman, and the check-weighman prevails in all of the mines now where our union has been organized. In addition to this, we are about to have a special session of the Legislature in West Virginia in which we are given to understand that a law will be further established with reference to mine safety, and with a check-weighman, and mine regulations, and all these things which we stand in so much need of. And after all this great fight and numerous sacrifices that we have made we can congratulate ourselves on the progress we have made, and my sincere desire is to see our great organized districts free from industrial strife so we may establish the union in other fields that we have referred to, because any casual observer must
1603 know that in the strong organized districts we have about reached the end of our wage conditions unless we can bring about the organization of the unorganized fields.

You cannot keep this movement half slave and half free. The fight belongs to the organized miners to make. You who have tasted of the fruit of this movement, and found out its benefits as compared with the conditions of the past, know that the great brunt of this battle must of necessity fall upon

your shoulders, to free these fellow workers in the non-union coal fields of this country.

The awful conditions that grew out of the struggle in West Viriginia, and are enlarged in Colorado, my friends, is the darkest chapter in American history. No matter what our statesmen may think, and try to dodge the responsibility of trying to deal with our industrial problems, the issues are fast being driven home to them, and the successful statesman of our time, irrespective of his party ties, is forced to give consideration, and will be forced to give consideration to this all deserving proposition of our industrial system. America's industrial system is a disgrace. More men are slaughtered in America's industries than in any other country of the world. The coal mines of this country slaughter more men than any country of the civilized world. Yet we have boundless resources. No nation on the earth can afford to give to its working men as much as America, and yet we find the most awful, the most deplorable conditions of industrial affairs prevailing in our land, and in Colorado Mr. Rockefeller
1604 excusing himself from the outrages in Colorado will not suffice. He may try to find peace from this awful condition by being consoled by the class that he associates with. There can be no let up in this fight, despite what may be said to the contrary, until the Colorado miners are clothed with the same rights and enjoy the same emoluments of an advancing civilization, just the same as you men are permitted to enjoy. (Applause.)

I have grown to admire the Colorado miners for the reason that many of them are the pioneers that were driven out of the Eastern states, and this state and other states that I might enumerate, because of their unionism, and they went West when Colorado was new, when this virigin field of coal was yet undiscovered, and they carried that principle with them, that they were compelled to sacrifice their homes for in the East, and they went out there and in these little mining towns in Colorado they built up nice homes, and reared good families, and were enjoying life as working men ought to enjoy it, but finally this grasping policy of the civilized industrial task master soon found them again, and we find [thed] today engrossed in one of the greatest industrial warfares that this country has ever witnessed. The country has stood aghast at these recent outrages, and now the newspaper writers all over the field are trying to find out the truth. The governor of Colorado has sat idly by and watched this. He is driven finally to say that he represented the cause of the people, and

yet he has served the interests so valiantly and so well, and has given evidence to the fact, that notwithstanding that on the public rostrums, I am told, when he made his cam-
1605 paign for the votes of the people of that state, and the working men in particular, that he ridiculed the former governor of that state, Peabody, who dealt with the laboring interests out there in a very drastic manner, and punished them when he had an opportunity, yet his governor has permitted the coal operators to fill the State Militia with their gun men. Even in their own court martial last Saturday they were compelled to admit and furnish the list of men who participated in the murder of these people at Ludlow, and out of 165 in Company A, 130 of them were gun men employed by the Victor Fuel Company, and in another company nearly all but four or five were gun men, and yet this governor sends the militia in there, not for the protection of the miners, but when the miners get the best of them he sends the militia down there to protect the vested interests just like Peabody did.

(A Voice: He is a Democrat, too.)

International President White: Yes, he is a Democrat. I might say that he has spent millions and millions in the two counties of that state with his militia, and those two counties paid $12,265 in taxes a year. It is true that we are spending large sums of money, but, my friends, everyone who knows the conditions of Colorado knows full well that there is positively no spot on the face of the earth, not even Russia, where there is such conditions prevailing as in Las Animas and Huerfano counties, and if it falls to the lot of the Mine Workers to overthrow that citadel of corruption, the world will not forget that this organization fought the battle for the
1606 establishment of government. The people are in desperate need, as soon as they enlist in this battle. It remained for the United Mine Workers to establish them in temporary homes, and to furnish food and clothing and shelter them the best they could, and the Colorado miners have fought that battle in a general way, and have complained very little. They are grateful to the Mine Workers of this country for the moral and financial support that they have received, and I believe that they will prove themselves good soldiers, if providence so shapes their course that they can establish themselves in this organization, as you men have established yourselves in the Southwest, after your long struggle of months and months, as I now recall, and I hope it will not be long until we can herald the good news all over the world, for this tremendous outrage in Colorado recently has been wired all over the world—the other day I received a

telegram from way down in South America, expressing their sympathy with the American miners, and particularly with the strikers in Colorado who were subjected to such conditions. So you see that while the world is large, that the cause of the laboring men is getting more consideration all of the time. I believe, my friends, that this strike now so conspicuous in the public eye, will prove in a large measure the last gallant stand of the interests that oppose the United Mine Workers. If Rockefeller and his millions that he never earned are defeated in Colorado and he is compelled to recognize the explosion, show that the laws were violated and because of such violation the explosion occurred and our loved
1607 ones killed, rights of the men who work in his mines, it will go a long ways in my humble judgment to establish your organization in other non-union fields. I know that the men of the Southwst have contributed royally. I want to take this occasion to thank the miners of District 21, and their officers, for the splendid financial support and moral support they have given my administration in aiding me and the Colorado miners to carry on that warfare. I am sure that had it not been for the timely assistance they rendered, at a time when it seemed to me to be very acute in our history, it would have been very serious with us to meet that situation. I hope that the Southwest miners will never have to witness such a condition as I have referred to, but if they do, and I am in the movement, no matter where I am, I shall always try to do for them my very best. Now, my friends, I want to say to you that I am not going to take up your time any more."

1608 Mr. Warrum: In reference to this class of testimony, while we would like to offer cross-examination, we would like the consent of counsel to defer cross-examination until they are through with this class of testimony, and then we can read them all together.

The Court: Very well.

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Mr. Lucas: We will now read the testimony of Mr. D. A. Steele, on page 1804 of the former record. Mr. Steele is now without the jurisdiction of the court.

Testimony of D. A. Steele.

Direct Examination

(The direct examination of D. A. Steele was read by Mr. Lucas and Mr. Hardin as follows):

"Q. Your name is D. A. Steele? A. Yes.
Q. What is your present occupation, Mr. Steele?
A. Railroad agent and express agent,—Wells Fargo.
Q. At what station? A. At Hartford, Arkansas
Q. Did you hold that position in 1914?
A. Yes, sir, with the exception of a short period I was away on a vacation.
Q. Were you there in July, 1914? A. Yes, sir.
Q. Do you remember the circumstances of going out to the Dallas mine and finding it on fire? A. Yes, sir.
1609 Q. State what occurred in that connection, when it was and all about it?
A. It was Sunday morning about one o'clock, July 19th.
Q. July 19th?
A. Yes, sir, Sunday morning about one o'clock. I was called,—
Q. Who called you?
A. Mr. Jim Long. We have rooms in the station and it takes about thirty minutes to walk out to the Dallas mine and we reached there at 1:30 possibly.
Q. In the middle of the night?
A. Yes, sir, Sunday morning, and we found the engine room on fire.
Q. Talk a little louder, Mr. Steele, it is hard work to hear you.
A. We found the engine room practically consumed. The fire was still burning on the timbers leading up to the tipple. So I gave my attention to releasing the cars that were in danger.
Q. Those were what cars?
A. Midland Valley cars that were stored there.
Q. And you were agent for the Midland Valley also?
A. Yes.
Q. What did you do with reference to pulling those cars out? A. I secured the assistance of several parties.
Q. Who were they?
A. Mr. Long, the party that called for me, and Charles Clayburn.
Q. Do you know whether he is the father of Lloyd Clayburn? A. No.
Q. Do you know where he lives?

A. No. He lived near the mines, but I don't know
1610 whether he lives there at this time.

Q. Was he a miner?

A. Yes, and there was Mr. Ellard, I think his name is William. He was operating a small mine in the vicinity there and Mr. Cope, I forgot his given name; I think it was John. And George Fuller. Those were the parties that assisted me in releasing the cars.

Q. What did you do with reference to pulling those cars out? Where were they?

A. On the track leading up under the tipple. They had stored them there. They were not using them then.

Q. The Dallas mine was not being operated then?

A. No. We secured crow bars and cut them off in bunches of four each and dropped them out on the main line.

Q. How long did you stay there?

A. Possibly 45 minutes.

Q. What was the condition of the engine house when you left?

A. It was practically consumed.

Q. Was any part of the tipple burned then?

A. Yes, the tipple timber leading from the engine room to the tipple, the part that extends above the tracks."

Mr. Warrum: No cross-examination.

Mr. Lucas: We will read the cross-examination.

"By Mr. Covington:

Q. Mr. Steele, did you know anything about the condition surrounding that mine just prior to that?

A. No, sir, I had not been out there for quite a good while. The mine had been idle and I had no occasion to check it up.

1611 Q. The mine had not been operated for a long time?

A. Not for several weeks, possibly months, I have forgotten just how long.

Q. The pile of slack or stuff that was thrown out there had been afire for months and burning up to the,—

A. (Interrupting). No, sir, I don't know anything about that.

Q. You say that Charles Clayburn assisted you in putting out the fire?

A. Not putting out the fire, he helped me release the cars.

Q. Who put out the fire? A. I could not tell you.

Q. What? A. I don't know.

Q. It did not burn?

A. It seems to have gone out of its own accord. It was burning when we returned home.

Q. Didn't the men gather in there and put out the fire and save the tipple? A. Not to my knowledge.

Q. After the engine room was destroyed?

A. Not to my knowledge,—not while I was there.

Q. You left after you released the cars, did you?

A. Yes, sir, after I performed my duty, I left."

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1612 M. B. WILLSEY, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Will you state your name in full?

A. M. B. Willsey.

Q. What is your present occupation?

A. Well, sir, I am a blacksmith now, at the present time.

Q. What was your occupation in 1914?

A. I was mine foreman for Bache-Denman Coronado mine.

Q. Talk loud enough so the last juror can hear you. What was that answer again?

A. Foreman of the Coronado mine in 1914.

Q. The Coronado mine? A. Yes, sir.

Q. That was part of the Bache-Denman coal property?

A. Yes, sir.

Q. Where was the Coronado mine located?

A. About two miles and a half from Huntington on the Frisco.

Q. How far was the Coronado mine from the Prairie Creek mine No. 4 we have been talking about?

A. I don't know. I should judge about 3 miles. I couldn't say exactly. It is something like that.

Q. I just want to ask you, as a preliminary question, whether the Coronado mine was burned the same day that Prairie Creek No. 4 mine was burned? A. No, sir.

1613 Q. It was burned on a later date?

A. Yes, sir.

Q. Mr. Willsey, you say you were superintendent of the mine? A. Mine foreman.

Q. Mine foreman? A. Yes, sir.

Q. How long did you occupy that position?

A. I think the first part of 1907 that I went to Coronado, and I was there until 1914 when it burned down, about 7 years.

Q. You were 7 years at the Coronado mine?

A. About that time. I couldn't say exactly.
Q. Will you state what equipment there was at the Coronado mine?
A. Well, there was 5 boilers, hoisting engine, and slack washer.
Q. What was the capacity of the slack washer?
A. I should judge about 500 tons. I dont' know exactly.
Q. It was a complete washer?
A. Yes, sir, it was a complete washer
Q. 500 tons a day?
A. I think that was the capacity of it, yes, sir.
Q. Was there a boiler house there?
A. There was 5 boilers, the same boilers for the mines and slack washer both.
Q. Give us the approximate size of the boiler house.
A. The boiler house, as near as I can remember,—I never measured it, but I suppose it was about 35 by 60, or 30 by 60, something like that.
Q. What type of boilers were these?
1614 [Q.] I don't know the type of them.
Q. Were [the] fitted up?
A. Yes, sir, ready for work.
Q. Ready for operation? A. Yes, sir.
Q. Was there an engine house there?
A. Yes, sir.
Q. Could you give us its approximate size?
A. About 24 by 30, I would judge.
Q. Was there a hoisting engine there?
A. Yes, sir.
Q. Do you remember the size of it?
A. About 18 by 36.
Q. What about the supply house?
A. There was a supply house there.
Q. About what was the size of it?
A. I guess 18 by 20, maybe.
Q. Was the supply house full equipped?
A. Yes, sir.
Q. With what?
A. Pipe fittings, repairs for the slack washer, repairs for the pump, piston rods, such as that, everything for the operation of a mine.
Q. Fully equipped for operation?
A. Yes, sir.
Q. Was there a fan in the fan house?
A. Yes, sir.
1615 Q. That was a part of the Coronado equipment, separate from any other plant?

A. Yes, sir.
Q. Was that fan ready for operation?
A. Yes, sir.
Q. In good condition?
A. Yes, sir.
Q. Was there a friction clutch engine there?
A. Yes, sir.
Q. That, too, was in good condition?
A. Yes, sir.
Q. Now, Mr. Willsey, were the various types of machinery you have enumerated, and the various parts of the equipment of the mine, all destroyed?
A. They were destroyed, but the fan was not destroyed.
Q. The fan was not destroyed?
A. No, sir.
Q. The balance you have described was destroyed?
A. Yes, sir.
Q. By what?
A. Well, by the fire, all except the hoist, and it was dynamite.
Q. It was dynamite? A. Yes, sir.
Q. With reference to that part of the mine that was fired, when was the mine set on fire?
A. Somewhere between 11 and 12 on July 20th.
Q. Three days after the trouble over at Prairie Creek
1616 No. 4? A. Yes, sir.
Q. Will you describe where your house was located with reference to the mine?
A. My house was about a thousand feet or three hundred yards from the mine north, and about two hundred feet west, north and west.
Q. Could you see clearly from your house to the mine?
A. Yes, sir.
Q. Were there any trees or anything that would obstruct your vision?
A. Nothing between my house and the mine at all. The supply house was on one side of the line and the barns on the other.
Q. Will you describe very fully the full circumstances when the Coronado mine was burned?
A. Yes, sir. The morning of the day it was burned I was looking at it. It hadn't run for a few days. It had been shut down. I had been down to the depot to get a paper, when the train came in. I came back around the mine, and was there along about noon, 11 or half past 11, when I went up to the house for dinner. I was sitting reading the paper. Along

about 20 or 25 minutes after I got home, my daughter was getting dinner, and we had a porch on the south side screened in for to eat on in the summer time, and she was setting the table out there for dinner, and she happened to look up and seen the fire up there, and she said, "Papa, the mine is afire. The tipple is afire." I run down there as quick as I could, and as I was going down there I hollered to Mr.—I can't remember his name just now.

Q. To refresh your memory, was it Mr. Smith?

1617 A. Lewis Smith, an he called his son-in-law, Will Miller, and we went on down there. When I got down there the elevator in the slack washer was afire. It was about 3 feet square, I guess. There was a door right in the bottom about 4 or 6 feet from the bottom. They used that to get into the elevator to repair it. There set a bucket of coal oil, a gallon bucket that had a good deal of coal oil in it.

Q. Was there any coal oil in it then?

A. About half an inch in the bottom of the bucket.

Q. About a half an inch in the bottom of the bucket?

A. Yes, sir. The coal oil was all up and down on that elevator, and by the time we got there the blaze was about half way up. We had no means of putting it out, and it just went like wild fire.

Q. What was burning when you got there?

A. Just the slack washer and that elevator.

Q. I mean whether the timbers had caught on fire or was just the coal oil burning?

A. The coal oil and the timbers were beginning to burn when I got there.

Q. The timbers were beginning to burn when you got there?

A. Yes, sir, the 2 by 12 boxing, with sheet iron on the outside of the flume. Coal oil had been put on the inside.

Q. Was anybody about there when you found that coal oil bucket?

A. There were two or three saw the bucket. There was Lewis Smith and Miller and my son and there were several others that were there, but I don't remember who they were now.

Q. Did Mr. Smith yell at you to get out of there?

1618 A. Yes, sir.

Q. Did he say why?

A. He said "You better get out. There might be something else in there."

Q. Did he say anything about dynamite?

A. Well, I believe he said there might be dynamite in there.

Q. Did you see anything suspicious about the mine?
A. Nothing at all, only that bucket of coal oil. That coal oil had been in there, and I seen a man's tracks.
Q. Just describe that.
A. Where the coal oil set I looked there and seen the tracks. The track had been graded down about 6 or 7 feet lower than the ground, or about as high as a man's head, and he had gone down through there, and then right around a pile of dirt out of the slack. It was soft. You could see the tracks along in the field. That was all you could see.
Q. Did you follow those tracks?
A. As far as I could see them, and after they got out of the loose dirt I couldn't follow them.
Q. They were traceable in the loose dirt?
A. Yes, sir.
Q. You could not trace them after that?
A. Not after he got out on the main railroad track.
Q. How many people were gathered around there by this time?
A. I guess before it all burned up there must have been 25 or 30 around there. The boys from the camp come down.
Q. Did you make any effort to put the fire out?
1619 A. No, sir. I had nothing to fight it with.
Q. Was there any water available to fight it with?
A. There was a pond there close by, but that was inside the elevator, the boxing on the inside, and there was no way of fighting it.
Q. Could you have brought enough water into the elevator to put it out?
A. Not with buckets, you couldn't.
Q. What was the effect of the elevator? Did that act as a chimney? A. Yes, sir.
Q. To fan the fire?
A. Yes, sir. It was open from that door at the bottom clear to the top, I guess 50 feet high.
Q. Had that door at the bottom been lifted open?
A. We kept it open nearly all the time.
Q. It was open all the time?
A. Yes, sir.
Q. Now, Mr. Willsey, you have been foreman there for 7 years? A. Yes, sir, about 7 years, something like that.
Q. Did you set fire to the Coronado mine?
A. No, sir, I did not.
Q. Did anybody in your family set fire to the Coronado mine? A. No, sir.
Q. What is your family? What was the size of it?

A. I had 5 children. There were 4 there at the time. 3 boys and my youngest girl were there at the time, at
1620 my house when it burned.

Q. That was the only means of sustenance that you had? A. Yes, sir.

Q. That was your entire job?

A. Yes, sir.

Q. Did anybody come around and try to get an affidavit from you as to how the fire had started?

A. No, sir, they didn't come around to me, but I heard there was some affidavits made out against me for setting the fire.

Q. Affidavits that you set fire to the mine?

A. Yes, sir.

Q. What did you hear in that connection?

A. I heard there was some affidavits of four men that went to Greenwood and made an affidavit that I set it on fire. I never heard anything more of it afterward.

Q. Who told you that? A. This Lewis—

Q. Lewis Smith? A. Lewis Smith, yes, sir.

Q. Was he your neighbor?

A. He lived between my house and the mine.

Q. Is he the man you called to when you ran down to the mine? A. Yes, sir.

Q. Did Mr. Smith go down there, follow you down there?

A. Yes, sir.

Q. Did he give an affidavit?

A. He said he knowed I didn't do it, and he wouldn't give it.

1621 Q. Did they try to get an affidavit from him?

A. That is what he told me.

Q. Who was giving the affidavits?

A. He told me it was Dr. Jones, Lee Anderson, Howard Shaw and McLain. I forget McLain's given name. It was Tom, I think.

Q. Tom McLain? A. Yes, sir.

Q. M-c-L-a-i-n?

A. I believe that is it, yes, sir. I never heard any more of the affidavits after that.

Q. Mr. Lewis Smith had been asked to sign an affidavit?

A. Yes, sir.

Q. Where was he employed?

A. He was employed at No. 3.

Q. Was he a union miner? A. Yes, sir.

Q. Was he working when they tried to get him to sign an affidavit?

A. I couldn't say whether he was or not.

Q. Do you recall his stating anything to you about losing any time if he went to give an affidavit?

A. I believe he did say he wouldn't lose any time to go over there, for he knowed I didn't do it.

Q. Did they give him any assurance that he would not have to lose any time if he would go?

A. Not as I remember now. I don't remember that they did that. It has been so long ago, I don't remember if he did.

Mr. Lucas: If the court please, if I may refresh his
1622 memory by reading a question and answer to him from his former testimony?

The Court: Very well.

Q. "What did he say about them having tried to get him to sign that affidavit? A. They told him they wanted him to go and he said no, he was not going to lose no time, that he didn't think I had done it, and they said he didn't need to lose no time, that they would pay his day's wages, and he refused to do it." Do you remember giving that answer?

A. No, sir.

Mr. Warrum: What was that question from?

Mr. Lucas: From the former testimony.

A. (Continuing) I believe, since you read it over, I think that is right.

Q. And that is still correct, according to your present recollection? A. Yes, sir.

Q. Do you know where these affidavits were being given?

A. I heard at Greenwood.

Q. Before an officer?

A. Yes, sir. That is what Lewis Smith told me. That is all I know about it, is what Lewis Smith told me.

Q. Mr. Willsey, were you the only one at the mine on that day?

A. I and my son was there. We just came up together to the house for dinner.

Q. Were you in charge of the property?

A. Yes, sir.

Q. It was not in operation?

1623 A. No, sir, They hadn't run for several days.

Q. When was the last time the Coronado mine had operated?

A. I think, if I am not mistaken, it was on the 18th.

Q. Of what month?

A. July. I think it was the 18th, if I am not mistaken. It has been so long ago I don't remember exactly, but I think it was the 18th.

Q. When was it in operation previous to that?

A. I think we had run a little on the 13th and 14th, and then laid off on the 15th and 16th, and run on the 17th and 18th, if I remember right.

Q. The Coronado mine was being operated union, was it not? A. Yes, sir.

Q. Up to this time? A. Yes, sir.

Q. Did the union miners leave the Coronado mine and not report for work at any particular time?

A. It has been so long back I couldn't state positively about that. We had a little trouble there once in a while, when the men would be idle on a strike, but any certain time I couldn't say.

Q. Mr. Willsey, to refresh your memory, did you testify on the other trial, did you make this answer in response to this question at the other trial: "Q. When did the Coronado stop operating? A. The last day the Coronado run, I believe it was on the 18th day of April."

A. April, I should say, yes, sir. No, I don't think that was April. It must have been July. I made a mistake there.

1624 I guess.

Q. Did the Coronado mine run full blast up to April and then later on in July?

A. Yes, sir, that is right.

Q. What was the occasion of the Coronado stopping work in April?

A. Let me see. I know we was out of work there from having some trouble down about No. 4 some place, and I believe the men were out in sympathy with them fellows down there for a while, but I couldn't say positively what they was out for, now.

Q. At any rate, they were out and not operating the mine?

A. For a while they wasn't operating. We run up on the last run, I think it was about to the 18th, along about the 18th of the month. We run two or three days after No. 4.

Mr. Lucas: You may cross examine.

Cross-Examination.

By Mr. Warrum:

Q. You have just stated that you were asked this question: "When did the Coronado stop operating"? And that your answer was: "The last day the Coronado run, I believe, was on the 18th of April." You so testified on your former examination?

A. I know it was on the 18th, but it has been so long ago I couldn't say positively.

Q. Then were you asked this question: "Do you remember when it first stopped, just before that, do you remember that date?" And your answer was: "Well, it ran in the last four days run, it was on the 13th and 14th, and then off to the 17th, and run the 17th and 18th of April"?

A. Yes, sir, I guess that is right.

1625 Q. Then it was not July, but it was April?

A. It was not operating in July at all.

Q. It was not operating in July at all? There was no coal being mined there a few days before the battle, was there?

A. Well, now, I will tell you: I wouldn't say for sure. I couldn't say positively.

Q. I will ask you if you didn't testify on your former examination, in reply to this question: "And it did not operate again, then, until it was destroyed?" And your answer was, "No, sir, it never operated again"?

A. No, sir, it didn't operate after it was destroyed.

Q. Then it didn't operate a few days before it was destroyed?

A. I couldn't say. I have forgotten about that. I don't remember exactly how that was. That is pretty hard to tell, to remember a date as long ago as that. I don't know whether they was working or not. They worked along there, and then there would be a little strike or one thing or another, and they wouldn't work for a little while. I couldn't remember now about the date.

Q. They didn't operate with non-union labor?

A. No, sir.

Q. Was that tipple insured, do you know?

A. I couldn't say.

Q. You never heard about it being insured?

A. No, sir.

Q. You never talked to Mr. Bache about it being insured?

A. No, sir. That was not in my line of business, what I was looking after, and I never asked him about in-

1626 surance.

Q. You don't know whether he collected insurance or not? A. I don't know anything about it.

Q. You were over at the tipple about half past 11?

A. I left the tipple right along between 11 and half past 11 and went up to the house for dinner.

Q. And you hadn't been there but a few minutes until your daughter said the tipple was burning?

A. 25 or 30 minutes when she seen the fire.

Q. Let me ask you if you didn't testify to this on your former examination.

A. It was something like that. I couldn't remember just exactly. I never looked at my watch.

Q. I will ask you if you didn't testify as follows on your former examination: "I was up around the mine, and just about 11 or half past 11, about half past 11, as near as I could judge, and then I went on up to the house for dinner. There was no one around the place that I could see, and dinner was not quite ready when I got up there, and I sat down in the house to read the paper. My house was facing, the dining room faced the mine, and we had a porch screened in on the south side of the house to eat on in the summer time when it was warm, and my daughter went out to set the table, and she happened to look up and said that the tipple was afire, and me and my friend run down there." Is that right?

A. Yes, sir.

Q. And was that Smith that came down there with you?

A. Lewis Smith. He lived between my house and the mine right by the mule stable.

1627 Q. And he came there with his son-in-law?

A. Yes, sir.

Q. What was his name?

A. Will Miller.

Q. Will Miller? A. Yes, sir.

Q. Did you say to him, when you met him there by the tipple, that you had gotten there 10 minutes ago?

A. No, sir, I didn't.

Q. You don't remember saying that to Mr. Smith?

A. I don't remember saying that to Mr. Smith

Q. When you went up to the tipple it was burning. Is that right?

A. Yes, sir, it hadn't burned all the coal oil off yet. There was a lot of it still there, a lot of the coal oil still there.

Q. There was coal oil still there?

A. Yes, sir.

Q. And while you were there did Mr. Smith and Mr. Miller say, "We will put out the fire, if you want us to". And you said, "Let it burn. Mr. Bache will be tickled about it. It is insured"?

A. No, sir, I didn't say that.

Q. You never said anything of that kind?

A. No, sir, I didn't

Q. Did you say that to either Mr. Smith or Mr. Miller or anyone there? A. No, sir, I didn't.

Q. To let it burn?

1628 A. No, sir, I didn't.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Lucas:

Q. Mr. Willsey, what is the name of the son that went down to the fire with you? A. M. O.

Q. Those are his initials? A. Yes, sir.

Mr. Lucas: That is all.

The Court: Stand down.

(Witness Excused.)

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M. O. WILLSEY, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas.

Q. Your name is M. O. Willsey?

A. Yes, sir.

Q. Are you the son of the man who was just on the stand?

A. Yes, sir.

Q. Were you living near the Coronado mine in the spring of 1914 or summer of 1914? A. Yes, sir.

Q. Did that mine burn at the same time the Prairie Creek Mine No. 4 burned? A. No, sir.

1629 Q. When did it burn?

A. Three days afterward, as well as I remember.

Q. Were you present at the house when your father went down to the mine? A. Yes, sir.

Q. Just describe what happened on that day?

A. Well, as well as I remember, I had been up by the company store with a bunch up there playing cards, like we do in idle times, and along somewhere around 11.30 or about noon I started home for dinner, and after I got home dinner wasn't quite ready, and I was sitting around the house, and my sister was there, and she looked down toward the mine, happened to look out toward the mine and she said the tipple was on fire, and my father and I went down. As we was going by Mr. Lewis Smith's house, about half way to the mine, next to the mule stable, we hollered to him, and him and his son-in-law, Will Miller, went with us, and when we got down there at that little shaft or slack washer down on the side next to the slack track, the north track, coal oil was thrown on the side of the elevator shaft, and there was a gallon bucket with a little bit of coal oil in it setting by the slack track, and there was a man's tracks there which looked like he had been run-

ning from east of the slack washer and across the refuse dump from the slack washer toward the tracks, and that is all I know about the case.

Q. Do you remember anything about the tracks that were made in the soft ground?

A. No, sir, nothing only a man's tracks, looked like he had been running.

1630 Q. Did you see your father follow those tracks down across the railroad?

A. I was with him all the time. All four of us investigated the tracks, as well as I remember.

Q. How much coal oil was left in that bucket when you found it?

A. Just a small amount in the bottom of the bucket. I don't know just how much there was there.

Q. How far along was the fire when you first got there?

A. Well, the flames were up in the elevator shaft 10 or 15 feet, I suppose.

Q. Was there any chance of putting it out at that time?

A. Not without a high powered hose of some kind and pressure. You couldn't put it out with buckets to save your life.

Q. Was there any high pressure there?

A. Not at the time. There was no steam up.

Q. The mine was not running?

A. If the mine had been running we could have [but] it out, but there was no steam on and with no pressure you couldn't put it out.

Q. Just what time did you go home on that day for dinner?

A. Somewhere around 11.30. I don't know the exact time.

Q. You found your father at his house? A. Yes, sir.

Q. How long was he there before your sister called atten- to the fire at the tipple?

A. I don't know. He was there when I got there. It was a few minutes afterward before she told us that the tipple was afire. I don't know how long it was. It was 10 or 15 minutes, maybe 20 minutes.

1631 Q. You saw your father on the porch or in the house all the time?

A. Something like that. I wouldn't say for sure. It has been so long ago I couldn't say exactly, but it was something like that.

Q. After you got down to the fire did you find many people gathered there?

A. After 10 or 15 minutes there was a crowd, like there is around a fire.

Q. Did you or your father call to Mr. Smith on your way down to the fire? A. Yes, sir.

Q. You heard your father call to him? A. Yes, sir.

Q. Did you see Mr. Smith follow?

A. Yes, sir. We all went down together. I believe I was in the lead. I was younger than the others and outrun them. As well as I remember, I was the first one to the fire. We was all practically in a bunch.

Q. When you got down to the mine did you see anybody there? A. Not a soul.

Mr. Lucas: You may cross-examine.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

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1632 F. J. HOLLOMAN, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. F. J. Holloman.

Q. You are a section foreman for the Midland Valley Railroad? A. Yes, sir.

Q. How long have you occupied that position?

A. 14 years, with a little time I was off.

Q. And you occupied that position from 1910 to 1914?

A. Yes, sir. I was at Midland, Arkansas.

Q. You lived there? A. Yes, sir.

Q. Where did your section extend to?

A. Well, it extended from 4 miles east of Excelsior to Prairie Creek, including No. 4 mine.

Q. Where did the Midland Valley run from Prairie Creek?

A. It ended there beyond Hartford where the mine was.

Q. At Greenwood? A. No, not at Greenwood.

Q. Where did it end? What mine?

A. They changed the name, and they taken up some of the tracks, and I am not able to say now. At that time it was at what was called the Patterson mine.

Q. How far was that from Midland?

A. It is about 9 miles, or 10.

1633. Q. Where does it run west, the Midland Valley Railroad? A. It runs west to Wichita, Kansas.

Q. Through Oklahoma? A. Yes, sir.

Q. How do you go to Fort Smith on the Midland Valley?

A. Through Excelsior, Arkansas, and Rock Island, Oklahoma.

Q. And then back?

A. Yes, sir, back on the Frisco.

Q. How far is it to the Oklahoma line from Hartford?

A. About 24 miles.

Q. Are there any stations in between there?

A. Yes, sir, small stations.

Q. Any manufacturing centers or anything of that kind?

A. No, sir.

Q. Where does the coal go that goes out on the Midland Valley?

A. The big part or all of it goes through Oklahoma.

Q. Did you ever hear of any of it going east?

A. I never knowed of it, no, sir.

Q. During that open shop time at Prairie Creek, do you remember that in 1914? A. Yes, sir.

Q. Tell about union miners coming to talk to you when you were repairing the tracks. Tell that incident.

A. We had instructions from the general office to line up and keep the tracks in good shape and make repairs, and work of that kind that was coming on, when they got ready to start hauling coal. I got instructions to put No. 4 mine track
1634 in first class condition. I went down there with a bunch of men unloading ties and started to work on the track, and we seen there was a bunch gathered down there far enough that we couldn't recognize them, having a little talk. I don't remember there was one, or probably four, come up to where we was at.

Q. Did you know these men?

A. I can't think of the names of any of them that come up there.

Q. Did you know they were union miners?

A. I was told by several miners that was working for me that they was.

Q. Go on.

A. The spokesman just stopped and said, "You are going to repair them tracks for to haul that scab coal out over, are you?"

Mr. Warrum: The defendants desire to separately object to this testimony, because it is apparent from the answer of the witness that he does not know who they were. Someone advised him they were so and so. Testimony of that kind could not be binding on these defendants.

The Court: Unless they are shown to have had some connection with these union miners.

Mr. Drinker: The remark shows they were in a conspiracy. They were trying to get him not to repair the track.

The Court: But you have not shown their connection. Have you any evidence as to who these people were?

Mr. Drinker: Nothing except what he knows.

Q. Had you ever seen any of them before?
A. The men that come up there?
1635 Q. Yes. A. Yes.
Q. Did you know where they worked?
A. Not for sure, no, sir.
Q. What is your best recollection as to where they worked?
A. My best recollection was they had been working at Prairie Creek No. 4.
Q. Before it went up in shot? A. Yes, sir.
Q. Now tell what they said.

Mr. Warrum: The defendants renew their objection. There has been no identification of these men.

The Court: He may state.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. What was said?
A. He asked me if I was going to repair them tracks to haul the scab coal out over. I made a remark something like this: "I am not going to repair it. I will supervise the work and the men will do it." He said, "Not on your tin type, you won't." Then I reasoned a little with him. I said, "I am here hired by the railroad company, and if I don't do the work some other man will. I have got a letter in my pocket telling me to repair that track, and if you object and run us off and cause trouble, you will just cause further trouble and have soldiers, maybe, and the tracks will be repaired just the same." I reasoned with him a little, and the men stopped work. I told the men, "Let's go to work, get busy."
1636 He said, "You are going to repair it, anway, are you?" I said, "I am. That is what I am going to do." He said, "You will never do it. There will never one car of scab coal go out over this track", and whirled and went back where the crowd was.
Q. What sort of tone did he talk to you?
A. He talked to me rough, mad.

Q. Now, Mr. Holloman, you came in contact with the union miners around there a good deal, did you not?

A. Very often.

Q. Where did you live?

A. I lived in the section house in the town of Midland, at the edge of town.

Q. Did you hear the union miners discussing the question of where the different companies sold their coal?

A. Yes, sir.

Mr. Warrum: The defendants separately object to this question because it is leading and suggestive, and instructs the witness as to the answer counsel desires him to make, and there is no identification of the parties.

The Court: It is leading.

Mr. Drinker: It seems to me we have gone far enough with us that I could suggest the topic to the witness, but I will try again.

The Court: I think it is leading.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

1637 Q. State any discussion that you have heard among union miners at this time and previous thereto relative to where the coal from the different companies was sold?

A. Well, time and again that was discussed. It is kind of hard to recall exactly.

Q. I don't mean the exact language. I mean your best recollection of what was said.

A. They told me one time about the Midland Valley buying the entire output of No. 4 mine. I remember of a little discussion on that, and I told them the Midland Valley didn't use that much coal. They said, "No, but they sold what they didn't use."

Q. Were matters of that kind an infrequent or frequent subject of discussion?

Mr. Warrum: The defendants renew their objection.

The Court: He may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. That was frequently discussed.

Q. Did you hear discussion, when Bache-Denman was just going to start open shop, by union miners as to why they understood he was doing it?

A. Yes, sir. I heard quite a bit along that line.
Q. State that. Do you understand the question?
A. I understand the question is why they were going to operate open shop.
Q. Go on.

Mr. Warrum: The defendants renew their objection.

1638 The Court: He may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. The miners seemed to think they was going to start open shop because they could not compete with the Central and other mines, which I can't call their names now.
Q. Did they say why they couldn't?
A. Yes, sir. Some of the union men told me why they couldn't, that Bache-Denman paid more water time, as they called it, and yardage and dead work than the other mines. One man in particular told me he got $20 a week water time. I asked him what he meant, and he said where you get your feet wet in the water.
Q. By "Central" you mean the Central Coal & Coke Company?
A. Yes, sir, I suppose that is what it was. It was across the track from me. I never was at the mine.
Q. Did you hear the union men talking as to who was running the strike for the union?
A. Well, yes, sir, I heard a right smart along that line one way and another.
Q. State about that.

Mr. Warrum: If the court please, we object to this testimony, because it is obiously an attempt to secure from this witness his conclusion as to what the miners of Prairie Creek said as to who was responsible for the strike. You can't bind the organization in that way.

The Court: I think that is true. Still, he may answer.

To which ruling and action of the court the defend-
1639 ants at the time duly excepted and still except.

A. They said it was too big a job to be handled by them fellows, and it would have to be handled by the entire membership of the United Mine Workers. They told me at the time how many there were, but I can't remember, that stood behind it.

Q. Did you hear discussion there as to what the miners considered would be the effect on the union if Bache-Denman got started open shop?

Mr. Warrum: We renew the objection heretofore made.

The Court: He may answer yes or no.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Did you hear it?
A. Yes, sir.
Q. What was that?

The Court: Who was it?

Q. By union miners?
A. Yes, sir.
Q. What was it?
A. If I understand the question right—

The Court: Read the question.

(Question read to witness by reporter.)

A. Yes, sir, they said they could produce coal cheaper than they did, because the Central Coal & Coke Company, they called it then, I believe, the big concern, grew up that way. It would throw them out of work. Consequently, they would all become open shop mines.

1640 Q. Did you hear discussion at that time by union miners relative to Bache-Denman hoisting water?
A. Not that I remember.

Mr. Drinker: That is all. You may cross-examine.

Mr. Warrum: No cross-examination.

The Court: Stand down.

(Witness excused.)

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WILLIAM B. THAREL, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Give your full name to the reporter.
A. William B. Tharel.
Q. You are known as "Buck" Tharel?
A. Yes, sir.
Q. And you kept a store at Midland in 1914?

A. Yes, sir.

Q. During that period did you see some disturbance there between the union miners and some others?

A. Yes, sir.

Q. Will you name the union men that you saw in connection with those disturbances, throwing rocks and things like that? I don't want to go into details. I just want you to identify them.

A. Foster Bean and a young fellow by the name of Colo, Molo, something of that kind.

Q. What were they doing?

1641 A. They were gathering up rocks and throwing at non-union men.

Q. Who were Marion Hulsey and Maje Hulsey?

A. Maje Hulsey was a deputy constable Marion Hulsey was city marshal at Midland.

Q. Did they see that? A. Yes, sir.

Q. Did they do anything to arrest these union men?

A. No, sir.

Q. Did you get a letter that was brought in by some union miners, requesting you to refuse to sell goods to the Bache-Denman men? A. Yes, sir.

Q. Who signed that? Who brought it to you? What men did you recognize?

A. I believe Bill Price was in the bunch, and Jess Griffin, and Joe Murray. There were several of them. I don't remember who all was in the crowd.

Q. Did you see John Murray?

A. Yes, sir.

Q. Joe Overman? A. Yes, sir.

Q. Sam Ward? A. Yes, sir.

Q. G. V. Peters? A. Yes, sir.

Q. A man named Priott? A. Price, wasn't it?

Q. I don't know. I am asking you.

1642 A. Price.

Q. Did you see a man named Priott?

A. Will Price.

Q. Will Price? A. Yes, sir.

Q. They asked you to sign that paper that you would not sell to these people?

A. Yes, sir.

Q. Did you ever hear the union miners discussing the market reached by the Bache-Denman Company, where they sold their coal?

A. Yes, sir, I heard them mention about that.

Q. Tell us what you heard discussed by union miners, at or before July, 1914?

Mr. Warrum: The defendants separately object to the question, because it is leading and suggestive, calls for an opinion and conclusion on the part of this witness, characterizing a discussion covering a long period of time, with no attempt made to fix the time or place when it occurred.

The Court: Let us hear what was said between these parties.

Mr. Drinker: That is what I want him to say.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Tell what they said.
A. I heard the miners—

By the Court:
Q. Where was it? Who was it? When was it?
A. That was at Midland, Arkansas.
Q. When? A. The year of 1914, if I remember right.
1643 Q. Who were talking?
A. Ab Cunningham, Bill Price, Tom Watson, Maje Hulsey.
Q. These were union miners?
A. Yes, sir.

By Mr. Drinker:
Q. Jess Griffin? A. Yes, sir.
Q. Any others? Tell what was said on that subject.
A. They was talking about the Bache-Denman Coal Company would ship coal into the foreign markets, taking the place of the union coal.
Q. Did they say where the Bache-Denman shipped?
A. They mentioned several markets. They mentioned some place away off in Wyoming, I believe, talked about how long it took the cars to get back.
Q. Did they mention any northern markets?
A. I believe they did?
Q. What? A. I believe Minnesota.
Q. Minnesota? A. Yes, sir.

The Court: See if he can state what they said, if anything.

Q. What, if anything, did they say anything about Bache-Denman shipping to Minnesota?
A. Well, they said they couldn't never let that coal go down there; that it would affect the union mines in Arkansas.
Q. What union mines?
1644 A. Well, in Arkansas, the Central mines.
Q. Did you hear any discussion about Bache pumping water? A. Yes, sir.

Q. What did they say about that?

A. They didn't seem to care how much water he pumped, just so he didn't ship any coal.

Q. Did you hear them discuss the houses, the Bache houses and what was being done with them, during that open shop time? A. Yes, sir.

Q. What did you hear them say about that?

A. I heard them say that the Bache-Denman Company had taken some of the union men and moved them from one camp to another, in order to make room for the non-union miners, something to that effect.

Q. Did you ever hear anybody talking about the Bache-Denmen employees, the union miners, being put out of their houses and not having any place to live? A. No, sir.

Q. Did you hear any discussion among the union miners about Bache breaking his contract?

A. No, sir, I don't think I did.

Q. You did not? A. No, sir.

Q. At this time? A. Not at this time, no, sir.

Mr. Drinker: You may cross-examine.

1645 Cross-Examination

By Mr. Warrum:

Q. You heard these discussions among the miners, the local miners, as they gathered around the store?

A. Yes, sir.

Q. But you never heard them say that Mr. Bache or his company had broken his contract that they had with the local, to work the union scale until July, 1914?

A. I never heard anything about the contract being broke.

Q. They never complained of that at all?

A. I don't remember it, no, sir.

Q. What?

A. I don't remember hearing them say anything of that kind.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

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1646 Mr. Lucas: We offer the deposition of J. E. FINNEY, taken at Tulsa, Oklahoma, September 24th, 1923.

Mr. Lucas: (Reading.)

"Q. Mr. Finney, state your full name.

A. J. E. Finney.
Q. Where do you live now?
A. Oklahoma City.
Q. How long have you lived in Oklahoma City?
A. Two and a half years.
Q. What is your business now?
A. Hospital business, superintendent of a hospital.
Q. Hospital located in Oklahoma City?
A. Yes, sir.
Q. Did you ever live in Arkansas? A. I did.
Q. Up to what time did you live in Arkansas?
A. I lived in Arkansas from 1887 to 1895 and then after an absence of two years in Texas lived in Arkansas until 1913.
Q. Were you in Arkansas in 1914? A. I was.
Q. What business were you engaged in in Arkansas?
A. Coal business. I lived at that time in Poteau, Oklahoma, but spent part of my time over in Arkansas.
Q. Do you remember where you were on the 20th of July, 1914? A. Huntington, Arkansas.
Q. What were you doing in Huntington on that day, Mr. Finney?
A. I started about noon from Huntington to go to Poteau.
1647 Q. In what way were you going, in what kind of a conveyance? A. In an automobile.
Q. You were a witness in this case of Coronado Coal Company and others against the United Mine Workers when it was tried in Ft. Smith in 1917, were you? A. Yes, sir.
Q. I wish you would state as near as you can remember what time you left Huntington on the day named?
A. About noon.
Q. Anyone with you? A. A. S. Johnson.
Q. What business was Mr Johnson in, if you know?
A. He was in the mercantile business, particularly, at that time.
Q. At what place? A. At Poteau, Oklahoma.
Q. In leaving Huntington, state whether or not you observed any men, either in town or out of town.
A. Yes, I observed a goodly number of men, especially from the bridge just at the edge of town going west.
Q. Who were the men?
A. I do not recall the name of any individual just at this time.
Q. I wish you would describe them if you can, Mr. Finney?

A. About the only description I could give is that they were men that, some of them, that I knew, knew they lived in Huntington, in and around Huntington.

Q. State whether or not they were coal miners or any of them were coal miners?

1648 A. As well as I remember they were all, practically all of them, coal miners.

Q. Were you in Huntington the night before that?

A. I was.

Q. Mr. Finney, state what direction the men whom you have just described were going?

A. Most of them were going in a westerly direction.

Q. Do you know where the Coronado Coal Company mine was at that time? A. I do.

Q. What direction was that from Huntington?

A. West and a little north.

Q. Were those men traveling along a public highway?

A. Yes, sir.

Q. Did that highway lead toward the Coronado Coal Company's mine? A. I did.

Q. State whether any conversation took place between you and those men or Mr. Johnson and the men in your presence and hearing?

A. There was something said about the inadvisability of going down the road the way we were going.

Q. Which way did you say you were going?

A. West, toward the Coronado mines.

Q. Just state your best recollection of what was said by you or Mr. Johnson and what was said by these men?

A. It was suggested that a report was current that seven armored automobiles came into Coronado the night be-

1649 fore and that it was unwise to take an automobile down in that direction at this time.

Q. Was that suggested by some of these men? A. Yes.

Q. Were they going the same road that you were going? That is, at the time you passed them, were they traveling in the same direction that you were traveling?

A. As I recall it. We were stopped and talking together.

Q. In Huntington the night before, did you get any information about any trouble that was going to take place at Huntington?''

* * * * * * * * * * *

"Q. Did you have any knowledge that the town was guarded on the night that you were there, the town of Huntington? A. There might have been a report to that effect.

Q. In going on westward, did you go by the Coronado mine? A. I did not.

Q. What way did you go to Poteau, by what towns?

A. I think we turned and went back by way of Mansfield and Hartford.

Q. Why did you turn that way, that way instead of going on the way that you had started?

A. Mr. Johnson was driving the car and he insisted that we should turn back and go around the other way

Q. Mr. Johnson, I believe you say, was a merchant at—

A. Poteau.

Q. Poteau. Was it his car that you were in, or yours?

A. His car.

Q. Mr. Finney, how long altogether were you in the coal business?

1650 A. Eighteen years, in western Arkansas.

Q. Describe the mines where you first started in business. I mean, tell where they were located.

A. At Burma, Arkansas.

Q. What was the name under which you were doing business there?

A. We started as the Turner & Finney Company, then organized the Dallas Coal Company to succeed this firm in 1901.

Q. I wish you would detail particularly the full extent of your experience in coal mining in western Arkansas, telling where the mines were located that you operated or assisted in operating or were interested in, giving a full history in detail of your experience in coal mining in western Arkansas?

A. Beginning March, 1899, in charge of the Turner & Finney mines at Burma, Arkansas; organizing and starting the Dallas Coal Company, 1901, of which company I was general manager and president until December, 1917. This company's properties were located at Burma which is now known as Midland, Arkansas. As principal owner of the Finney & Freeze Coal Company; opened and operated a mine near Hartford on the Midland Valley beginning 1904; as president and general manager of the Midland Six Coal Company, took over the old No. Six mine of the, I think, Bache-Denman Coal Company at Midland, Arkansas.

Q. That mine was located near Midland, Arkansas?

A. In 1915. Yes, sir, near Midland, Arkansas.

Q. When did your connection—(withdrawn.)

Q. Were there any other mines in western Arkansas in which you were interested?

1651 A. We owned a half interest in the Midland Coal and Mercantile Company mine.

Q. About what amount of tonnage did the mines produce, the ones in which you were interested?

A. In western Arkansas?

Q. In western Arkansas. In the average monthly or daily production, whichever way you want to put it?

A. Well, at times we had probably five hundred or six hundred tons a day; at other times, not so much.

Q. Mr. Finney, did you know generally where the mines of the Central Coal & Coke Company were located in 1914?

A. Yes, sir.

Q. Before and afterwards? A. Yes, sir.

Q. Where were those mines located?

A. No. Two was within a half mile of the town of Huntington; No. Three two miles west of Huntington; No. Five, about two miles northwest; No. Six about three miles west; and No. Four in the edge of the town of Hartford.

Q. Do you know where the mines of the Western Coal & Mining Company were in 1913-1914, if it had mines at that time?

A. They had mines Number Seven and Eight at Jenny Lind, Arkansas.

Q. About how far is it from Jenny Lind.....

A. May I explain this? That is in western Arkansas. They also had mines at Denny, Arkansas.

Q. How far is it from the coal field near Jenny Lind over to the coal field at Huntington?

1652 A. About fifteen miles.

Q. Did any..... was any other company operating any mines in the Jenny Lind Coal field or westward, other than the Western Coal & Mining Company in 1914, whether or not the Central Coal & Coke Company owned a mine in that field.

A. They owned a mine at Bennington, Arkansas, which is located about three miles south of No. 8 Western.

Q. What other coal mines were there, if any, other than those which you have named, operating in that western Arkansas coal field in 1914?

A. There were about five or six mines at Greenwood, Arkansas.

Q. State whether the mines at Greenwood were located in the fields more or less connected with the Jenny Lind field; in other words, the question I want to ask is whether those mines at Greenwood would be classed as mines more nearly

connected with the Jenny Lind field than they would with the Huntington or Hartford field.

A. Yes, they are nearer to Jenny Lind than they were to Hartford.

Q. Were you familiar with the location of the mines operated by the Bache-Denman interests? I refer to the mines that those interests had in 1914? A. Yes, sir.

Q. Where were those mines located?

A. Coronado was about two and one-half miles a little north of west of Huntington; Prairie Creek No. 4 was about three miles a little south of west of Huntington; Mammoth Vein Mine was about a mile southwest of No. 4; the
1653 Hartford Coal Co. mine was about half a mile west of Mammoth vein.

Q. Referring, Mr. Finney, again to the Western Coal & Mining Company mines, your evidence referred to them as Mines Seven and Eight. In order to refresh your memory, I will ask you if those mines were not numbered Seventeen and Eighteen of the Western Coal & Mining Company?

A. That is correct. I am wrong about that. It is Seventeen and Eighteen.

Q. They were mines located near the outcrop of the coal or back from the outcrop west, generally speaking, of the town of Jenny Lind, were they not? A. Yes.

Q. Have you mentioned now the principal mines that were operating in Hartford and Greenwood and Jenny Lind coal fields, being the western part of Arkansas and in Sebastian county?

A. As well as I remember, that covers the principal mines.

Q. Yes....had there been prior to that time a company operating under the name of the Bolen-Darnell Coal Company?

A. Yes, the Bolen-Darnell Coal Company had a mine in the edge of the town of Hartford.

Q. Had that company at that time, in 1914, or previous thereto, sold out to the Central Coal & Coke Company, if you know as to that? I don't know what the fact is, myself, I am just asking you if you know when they did sell out?

A. I think they sold out after that.

Q. Mr. Finney, state where the market was for the coal mined in the Midland and Hartford fields, Midland,
1654 Hartford and Huntington fields.

A. About eighty five percent of the coal from this field was shipped to Texas, Oklahoma, Kansas, Nebraska, and Kansas City, Missouri.

Q. With what kind of labor, whether union or non-union, in 1914 were the mines being operated in the Hartford, Midland, Jenny Lind and Greenwood coal fields?

A. All mines, as I recall it, were operated by union labor except the mines known as the Bache-Denman mines.

Q. Do you remember about the time that the Bache-Denman mines opened up as open shop mines or non-union?

A. I cannot give the dates as to that.

Q. Mr. Finney, assuming that the Bache-Denman properties had, prior to 1914 operated on a union basis and that they opened up on a non-union basis in 1914, in April, and assuming that those mines when properly operated under a non-union basis would produce as much as five thousand tons of coal per day, and basing your answer upon your knowledge of the coal business at the time, its interstate character, if any, your knowledge of the mines all producing non-union coal and union coal, state what effect, if any, the production and shipment in interstate commerce of five thousand tons of non-union coal would have upon the markets where the union coal from the mines of the Central Coal & Coke Company, and other mines in western Arkansas, would have?

Mr. Warrum: Now then, of course, if the court please, an objection was made. I don't know the language of the objection, but I wish to renew it.

1655 Defendants object to the question and the evidence sought to be adduced thereby, for the reason there are no facts which justify the assumption in the question upon which the answer is expected to be based, as to the production of the Bache-Denman mines being 5,000 tons a day and because that matter has been determined by the opinion of the Supreme Court on the former appeal of this case, and defendants object for the further reason that the witness has not qualified himself to testify upon this point, and that in any event the answer sought by the question is not in the nature of expert testimony or the opinion of an expert, but calls for a legal conclusion which is reserved to the courts.

Now, if the court please, the Supreme Court has absolutely passed upon that proposition; they have taken the testimony, not our testimony, but the testimony of the owners of these mines as to their capacity and they have stated that the national production of from ten to fifteen tons a week, and the production of five thousand tons a week in the Bache-Denman mines, in the most prosperous times, would have no appreciable effect upon the price per ton, of non-union competition.

There was a desperate effort made to get the court to modify that and [brief] were filed with the statement that their prices were greater than that stated by the Supreme Court. The Supreme Court took the testimony of the plaintiffs themselves upon their capacity, and made their finding. Now, to ask the witness this question is substituting his judgment for the judgment that is reserved to the court.

1656 The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. In my judgment the dumping of five thousand tons of non-union coal per day on the market served by the semi-anthracite mines of western Arkansas would prove very serious competition.

Q. Give your reasons, Mr. Finney.

A. The rate of deadwork.... * * *

A. The rate of deadwork, wage and the conditions of employment in the mines of the southwest, was higher than other mines producing coal in competition with these mines, hence the western Arkansas mines were unable to run full time on account of this competition. To produce a cheaper coal from western Arkansas would naturally tend to strengthen the competition and take from the union mines paying these high wages a considerable amount of business.

Q. Mr. Finney, have you operated both union and non-union mines? I mean by that question to ask if you have operated mines with union labor and also with non-union labor or open shop?

A. Yes, I operated two years in Texas where they have no unions.

Q. State whether or not the operation upon the open shop or non-union basis enables the coal operator to produce the coal at a less cost than when operating with union labor?"

Mr. Warrum: We press the objection to this testimony, which is that the defendants severally object to the question and the evidence sought to be adduced thereby on the ground

1657 that the question is too broad to authorize any intelligent answer on the part of the defendants; conditions may vary, mining conditions and other conditions relative to the marketing of coal, and that it is not possible nor proper to make a wholesale comparison such as the witness is expected to make, and no proper foundation has been laid for such testimony.

The Court: Oh, I suppose he may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. From my experience, in my judgment, open shop mines can produce coal cheaper than union mines.

Q. Mr. Finney, if the Bache-Denman mines had successfully opened their properties upon a non-union basis and had placed on the markets of Oklahoma, Texas, Kansas and Missouri five thousand tons a day, mining it at a cheaper cost than the union coal can be operated, what effect would that production and marketing in interstate commerce have on the production produced by the Central Coal & Coke Company and the other mines in Sebastian county in western Arkansas ultimately?"

Mr. Warrum: We renew the objection.

The Court: That would depend so much on the demand for coal, that it is a mere speculation. However, I will let it in.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. In my judgment it would practically put those union mines in western Arkansas out of business.

Q. If they did not go out of business upon being undersold in that way, in what way could they continue in
1658 business if at all, as to the matter of labor, whether they could resort to non-union labor and thus meet the competition of other non-union coal or whether they could in any other way than resorting to non-union labor stay in the market?"

Mr. Warrum: The objection is renewed.

The Court: Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Q. Go ahead with your answer, Mr. Finney?

A. It would be necessary for coal coming in competition with this non-union coal to be mined by non-union labor if they should continue in business.

Q. Relatively speaking, I wish you would state whether or not the Bache-Denman mines, taking them altogether at that time in 1914, were among the larger mines in the district in western Arkansas?

A. Yes, they were among the larger mines of that district: I think likely Mine No. 3 Central and No. 17 Western were the only two mines producing greater tonnage than Mine No. 4, Bache-Denman."

Mr. Warrum: (Reading)

"Cross-Examination.

"Q. It was about noon of July 20, 1914, you saw a number of men at Huntington at the bridge, and they told you that you and your companion, this merchant from Poteau, whom you were in an auto with, they told you that you had better not go down that road, that they understood that there
1659 were several armored cars had driven into Coronado the night before. Is that right? A. That's right.

Q. Were they threatening you, Mr. Finney? A. No.

Q. A matter of friendly advice? A. Yes.

Q. They seemed to labor under the impression that you would run into difficulty if you went down to Coronado, not from them or their friends but from other guards or non-union men? Is that not right?

A. I think that's true—a friendly warning.

Q. A friendly warning, not a threatening warning at all? You got the impression from what they said that they believed, whether true or not, that there were guards and other men representing the Bache-Denman interests at the Coronado mine that you might run into them if you went down that road? A. No, I didn't get that impression.

Q. Well, what impression did you get?

A. I think the statement was made that Coronado was going up. We could see the smoke and even the blaze at that time in the direction of Coronado.

Q. Now, that's not the question I asked you, Mr. Finney. The question I asked you— A. I beg your pardon.

Q. The question I asked you was what impression you got with reference to who it was that had come into town the night before, whether it was union miners or whether
1660 it was non-union people of the other side that they were warning you against?

A. No, I beg your pardon. No. We are not getting clear on that and I would like to make my statement perfectly clear.

Q. We want you to, yes.

A. The warning indicated that the night before seven armored cars were driven into Coronado.

Q. Yes?

A. And that the presence of an automobile going into the crowd down there would not be a good thing and I was advised not to drive down there.

Q. Now, they were warning as friendly men against the non-union men that you might run into down at the Coronado mine, were they not? A. No, sir.

Q. Isn't it a fact and didn't you testify at the other hearing that they had guards thrown out around Huntington the night before, fearing an attack from the Bache-Denman crowd?

A. I do not remember making that statement. There was a general rumor in Huntingtan about guards being thrown around the town, but I do not remember any specific knowledge of those guards being stationed.

Q. Didn't you answer me as follows: "The rumors, I understood they were to the effect that these non-union men were likely to make a raid on Huntington." A. Yes, sir.

Q. These were the rumors in circulation among the men you met at the bridge at noon, were they not?

1661 A. Those were the rumors in circulation on Sunday night, the night of July 19th.

Q. That would be the night before?

A. The night before I met the men at the brige at noon.

Q. Had you been in Huntington long on that occasion?

A. My father had died in Huntington on July the 18th and I was over there attending upon him and the funeral was on Sunday, the 19th.

Q. Did you get there before he died, how long had you been there? A. I had been there probably about a week.

Q. Then those rumors were in circulation every night in Huntington, had they not, that Frogtown had been shot up and that the guards or "scabs" as they were called, were liable to make an attack on Huntington?

A. I did not hear those rumors until Sunday night, July 19th, with respect to an attack being made on Huntington.

Q. That's all?"

The Court: Call your next witness.

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J. C. PEAL, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Just give your name to the reporter? A. J. C. Peal.

Q. Where did you live in the spring of 1914?

A. Midland, Arkansas

Q. What business were you in?

1662 A. The livery business.

Q. Was any approach made to you by the union men at that time in connection with the Bache-Denman operations?

A. Well yes in a way,

Q. What was it and what did they try to get you to do?

A. At one time the marshals came down to go out to the mine and they came to the stable to get me to carry them out, and one of the miners came and asked if I was going to haul those men out and I told him "Yes" and they said they would not do it. I told them they belonged to the same lodge that I did and I felt under obligations in that way, if nothing else, to accommodate them.

Q. Did you hear, about this time, and for a few months prior thereto, any discussion by union miners as to the effect of non-union coal from other states on the union mines of Arkansas?

Mr. Warrum: Now, the defendants object to this because it attempts to characterize the sort of discussion that the witness is asked about, and is a leading question.

The Court: It is somewhat leading, but I will allow him to answer. I wish you would not lead the witnesses any more on these matters than possible.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker: I have been trying to think of some way to get on that subject without taking so much time.

The Court: Proceed.

Q. Do you understand the question? A. Yes, sir.

1663 Q. State what that was?

A. The question, as I understand it,—

The Court: Read the question.

(Question read by the reporter).

A. Yes, sir, I have heard that discussed.

Mr. Warrum: May I ask the witness to speak louder?

Q. Go on, what was the discussion?
A. Well, that by coal being mined by non-union miners in the state of Alabama, that came into competition with the Arkansas coal, that it affected the working conditions of the miners in the Arkansas coal field.
Q. It affected them how?
A. The mines were not able to meet the competition, and there was less work.
Q. Did you hear any discussion during the spring of 1914 as to who was running the Bache-Denman strike for the union? A. I can't say that I did.

Mr. Drinker: Cross-examine.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused)

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Mr. Hardin: We offer the deposition of T. F. LINGO, taken at Tulsa, Oklahoma, October 8th, 1923. (Reading).

"Q. Your name is T. F. Lingo?
A. Yes, sir T. F. Lingo.
Q. Where do you live, please?
A. Tulsa, Oklahoma, Vern Station.
1664 Q. In the spring and summer of 1914 you lived at Hartford, Arkansas? A. Yes, sir.
Q. Your family was there? A. Yes, sir.
Q. What were you doing there then?
A. I was in the insurance business.
Q. How long did you live there prior to 1914?
A. I went there in 1912 and left in 1915.
Q. Were you acquainted with most of the people in Hartford? A. Yes, sir.
Q. How large a place was Hartford?
A. Around two thousand.
Q. What business were most of the people in Hartford engaged in? A. Mining.
Q. Were most of the people in Hartford miners?
A. Yes, sir.
Q. Or engaged in mining? A. Yes, sir.
Q. Coal mining? A. Yes, sir.
Q. Were they members of the United Mine Workers?
A. Yes sir.
Q. The miners in Hartford, all of them?
A. Yes, sir, there was nothing but union men there."

The Court: This is mere repetition of what we have had.

Mr. McDonough: This is a new witness, and the latter part is the most important.

1665

The Court: Suppose we get to that; this is merely repetition, the size of the town and that they were union men.

Mr. Hardin: The very next question takes in the subject.

The Court: Proceed.

"Q. Did you discuss with the men in Hartford, the miners in Hartford, and hear them discuss the question of union and non-union mines? A. Yes, sir.

Q. Did you ever hear them discuss the question of the effect of non-union coal from Alabama and West Virginia? Did you hear them discuss that? A. Yes, sir.

Q. What did you hear them say relative to the effect of West Virginia and Alabama Coal?"

Mr. Warrum: We made the objection at that time and we renew the objection that has been made to this testimony because there is no effort made to call the witness' attention to any particular time, place or person; that it is asking him for an answer that is in itself bound to be a conclusion.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Q. Now I will add to that, with the understanding that the objection holds to the question, that the time I refer to was during the spring and summer of 1914 and the place was in Hartford, Arkansas.

1666

A. The only thing I heard them discuss was that they could ship—the two states could produce coal cheaper than the union miners could and they could sell it for less than what they could produce it?

Q. Who could produce it?

A. West Virginia or Alabama.

Q. Who could produce it? A. The union miners.

Q. Where?

A. Hartford or any other union camp.

Q. State whether or not the union miners discussed in your presence at Hartford, in the spring and summer of 1914, the matter of non-union coal from Alabama or West Virginia coming into markets formerly held by the union mines of Arkansas?"

Mr. Warrum: We renew the objection.

"Defendants separately object to this question and the evidence sought thereby, because it calls for a conclusion on the part of the witness in the way of a summary of his opinion as to what certain conversations may have been, and is not and cannot be an attempt to ask the witness to state what was said by some person or persons at some particular time.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. I will add to the question: And if you did hear such conversation, what in substance was said? * * *

Q. Answer the question please.

1667 A. There is so much to it now that I don't know whether I can or not. I can answer in this way, I can say particularly that they said that the coal was being shipped into Arkansas but that it was being mined and produced and shipped to places that used their coal.

Q. That used whose coal?

A. Union miners' coal.

Q. The union miners' coal mined where?

A. Where they had unions.

Q. State whether or not during the spring and summer of 1914 you heard the union miners at Hartford discuss what would be the effect on the union operators if the Bache-Denman mines got started and run open shop?"

Mr. Warrum: We renew our objection.

The defendants separately object to this question for the reason that it does not call for any particular conversation but asks the witness to make a summary of it and tell his conclusions as to its import.

The Court: Objection overruled. Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Q. And if so, state the substance of that discussion?

A. Well, if the Bache & Denman ran open shops, it would not be [be] long before the other companies would want to run open shop and they were not going to let them run except closed.

Q. You mean that what you have just stated was the substance of what these men said in your presence?

1668 A. It has been so long ago now that I can't probably recall any one person, but it was the general talk all over town in the town of Hartford?

Q. What was? * * *

Q. What was the general talk in the town of Hartford?

A. That they were not going to let Bache & Denman run open shop.

Q. Were any reasons given in this talk as to why they would not let the Bache-& Denman run open shop with non-union labor? I mean the talk by the persons at the times and at the places we have been referring to in Hartford in 1914, by the union miners? Do you understand now?

A. Yes, sir.

Q. What was the substance of those talks?

A. It would have been on account of they could have produced it and sold it cheaper than the union operators, and on account they were in fear of these other companies would want to run open shop if they let them.

Q. When you say these other companies, what do you mean?

A. Central Coal & Coke Co. is the one company of any size that amounts to anything.

Q. Were any of the other companies except the Bache-Denman mines using any non-union labor? A. No, sir.

Q. They were all employing union labor exclusively?

A. Yes, sir.

Q. Where were you the day of the big battle on the 17th of July, 1914?

1669 A. I was at Hartford.

Q. Did you go out to Prairie Creek that afternoon?

A. Me and Mr. Dalton.

Q. How do you spell his name?

A. Charlie Dalton and I went out that morning at 9 o'clock, between 9 and 10, went as far as the Mammoth Vein mine. We seen a big fire and we went in my car; we got out and walked to the top of the hill and we seen it was the tipple on fire and went back and got in the car and went back to town. We went back at 4 o'clock that afternoon, drove out there and back that time. We drove as far as No. 4 Prairie Creek mine. We stopped about a quarter of a mile west of No. 4 Prairie Creek in the road, and we stayed there probably five or ten minutes and turned around and went back.

Q. Did you see any people when you went out the first time at nine o'clock in the morning? A. Yes, sir.

Q. See any man? A. Yes, sir.

Q. How many? A. A hundred or maybe two hundred.

Q. Any of them have guns?
A. Nearly all of them had guns.
Q. What kind? A. Shot guns, rifles, pistols.
Q. Which way were they going?
A. Just working around there in different ways.
1670 Q. Any high powered rifles? A. Yes, sir.
Q. Did you recognize anybody out there, see any men you knew, remember any now?
A. I can't recall but one that I seen at No. 4, that is Clint Burris. The reason I know him particularly is that he got in the car and drove back to town with us, that is he drove back part of the way to town with us, and he had a shot gun.
Q. For the three or four or five days before July 17th, before this battle, was there talk in Hartford as to anything that was going to happen at Prairie Creek?
A. They were going to shoot it up.
Q. Who was going to shoot it up? A. The miners.
Q. Who said that?
A. I can't remember now who said it; it was known generally for three or four days before that they were going to do that.
Q. You heard that from whom?
A. Everybody was talking about it.
Q. Union miners, were they?
A. I can't remember now.
Q. You heard it from all sides?
A. Everyone was talking about it.
Q. Was there any talk in Hartford about the guards from the Bache-Denman mines coming out and shooting up Hartford? A. Yes, sir, I heard that.
Q. Your wife and six children lived there in Hartford with you?
1671 A. Yes, sir.
Q. Had you any fear that the guards would come to Hartford with you? A. No, sir.
Q. What was your belief as to this rumor that the guards from the Bache-Denman mine were going to attack Hartford?
A. I didn't believe they would; they had no right as I saw it when they were protected by a federal court injunction."

Mr. Warrum: (Reading).

"Cross-Examination

"Q. You were not afraid that they would come over and attack Hartford? A. No, sir.
Q. But other people were?
A. There were quite a number that was.

Q. And that included miners, business people and others, isn't that true, practically all the people in Hartford?

A. Well, there was quite a number, that is, it was talked that they were going to come that night.

Q. The mayor put guards out, didn't he?

A. I don't know who put the guards out but they put out guards.

Q. A guard was thrown around the town? A. Yes, sir.

Q. Shortly before this the people from Frogtown came in at night into the city of Hartford, thinking that Frogtown had been shot up, didn't they? A. Yes, sir.

1672 Q. And that was one thing that caused the guards to be thrown out?

A. I suppose so. That happened the best I could remember, two days or two weeks before this other.

Q. Before the battle of July 17th?

A. Before they put the guards out.

Q. It had been talked in Hartford about the guards at the Bache-Denman mines arresting people on the highways, had there not, stopping people in driving by?

A. I don't know whether I heard now that they had arrested people, but I did hear some talk that one or two had been stopped; I didn't hear that they had arrested anybody.

Q. Don't you remember of their stopping a man named Dailey?

A. I knew Frank Dailey; I don't know whether I could recall about his particular case or not, but they claimed that one time two had been stopped.

Q. You heard about the guards out there insulting women, didn't you?

A. Yes, sir, there was reports like that.

Q. You heard about it, didn't you? I am asking you if you didn't hear that? A. Yes, sir, I heard that.

Q. And that partly inflamed the feeling in Hartford?

A. Understand this, it has been so long ago and I have never been through any matter of this kind and I can't think fast enough. But you could hear most anything at that time.

Q. You were not a witness in the other case?

1673 A. No, sir, this is the first time I have had anything to say about it.

Q. Where did you live before you went to Hartford?

A. I lived at Mansfield, Arkansas, and Huntington, Arkansas, born and raised in Arkansas.

Q. Whereabouts? A. Huntington and Mansfield.

Q. Were you ever arrested in Arkansas? A. One time.

Q. When was that? A. That was in 1898.

Q. What was the charge against you?

A. Robbery. That was when I was a small boy.
Q. Were you tried? A. Yes, sir.
Q. Were you convicted? A. Yes, sir."

Mr. Hardin: (Reading).

Redirect Examination

"Q. How old were you at the time?
A. I was about seventeen or eighteen, just a boy, convicted and pardoned in three months on account of my age, and I have never been convicted since then; I have raised a family of children and had responsible positions. I had a traveling position the road for four years; I traveled out of St. Louis from 1917 to 1921 for the Caradenes Harvest Hat Co. and for Delox Cap Co. of St. Louis for the same period of time,
1674 and I was general agent for the sperintendent of agents for the Lafayette Life Insurance Co. of Lafayette, Indiana, from 1909 to 1918, under bond.
Q. Now, Mr. Lingo, in view of what has come out, is there anything further that you wish to state in connection with this Prairie Creek affair?

Mr. Warrum: We renew our objection, which was that the defendants separately object on the ground that the question suggests that the witness will testify to facts that he has not testified to before, on the ground that he is piqued or prompted to, through anger.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. No, I am not angry.
Q. Now, if you want to tell anything more, you can tell about the facts relative to the Prairie Creek affair?

Mr. Warrum: We object to that because it does not call for any particular fact or facts, and is not framed in such a way that it will advise counsel for the defendants as to what matters will be testified to by the witness so that they may frame an intelligent objection thereto.

The Court: That is very true, but I don't suppose it is very material. Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Some three or four or five days after the Prairie
1675 Creek riot, myself and John Patty of Hartford, Arkansas—

Q. He was a union miner?

A. Yes, sir. We stopped at the scale house a quarter of a mile west of No. 4 Prairie Creek and there was a bunch of men in the road; in that bunch of men was a man by the name of Robinson, Sandy Robinson. I am not sure about his first name. And we got out and stopped the car and got out and listened at the conversation, and they were talking about where they had—union men had killed two non-union men, and this Robinson says: "You boys have been up there and seen it", and of course I knew nothing about it and they said, "Lets go up there" and every one, four or five in this bunch, we went up and they taken the lead, and we followed them up there; that was Sunday afternoon as best I can remember, and he said going up in this little hollow, that Paul Little and the sheriff had been out there and got these bones and put them in a tow sack and took them off, and we went up there to this little log cabin, and they commenced to scratch around in this pile of debris, and they scratched up a skull from here (indicating the lower jaw) that had the teeth in it,"

The Court: I don't suppose it is necessary to go into that. It is a mere repetition.

Mr. Drinker: Can we consider it read?

The Court: Yes.

Mr. Drinker: Consider the rest of it read.

"A. (Continued)—some with gold teeth, and John Patty scratched up one or two teeth and taken them to Hartford with him in the car, and they also scratched up some
1676 pearl buttons out of these ashes, some small pearl buttons, and John Patty—I was living in the same yard with Charlie Dalton. He showed these teeth to some men, Charlie Dalton was one.

Q. Were they union men that he showed these teeth to?

A. No, but sympathizers. Charlie Dalton was correspondent for the Arkansas Gazette, and he just remarked—

Objection to the remarks made because they would be hearsay.

Q. Was John Patty there at the time?

A. Yes, sir, he showed these teeth and he said, "Here are the teeth of some of our scabs that were burned up", and

he said "I am going to keep these and make a watch charm and put them in it". I had this skull myself for a long time and it finally got soft and crumpled. I never have told about this before in a court room because I didn't want to have anything to do with it.

Q. These men that you saw out there when you went there that Sunday afternoon, do you know who any of them were.

A. Sandy Robinson, one-legged Robinson, and I saw Bill Fene at Huntington.

Q. Was he a union miner?

A. A sympathizer; he was a restaurant man.

Q. And was Robinson?

A. Yes, sir, and Morton, and Morton was from Huntington.

Q. Was he a union miner? A. Yes, sir.

(Cross-examination waived.)

MR. LINGO recalled by the plaintiffs:

1677 Q. Mr. Lingo, you said you were pardoned for this offense?

A. Yes, sir, by the Governor of Arkansas.

Q. What Governor?

A. Governor Dan W. Jones, in March, 1900.

Q. What is your age?

A. Forty-two."

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ALBERT BENNETT, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Give your name to the reporter?

A. Albert Bennett.

Q. Did you hear some conversation by some union miners at Midland relative to marshals?

A. Yes, sir.

Q. Just before the battle?

A. Yes, sir, I suppose about a week before that.

Q. Tell what that was?

A. I was in the depot at this side from the mine, and they came to me while I was there waiting for a train, and asked me if there were any deputy marshals at the mine, and I told them I didn't know, I didn't think there was, and there was a bunch of them kind of got together, and they said, "That is as good as we want and they went off together.

Q. Was that all of it?
A. That is about all I can recollect.

Mr. Drinker: You may cross-examine.

1678 Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused.)

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W. A. MORGAN, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:
Q. Will you give your full name to the reporter, please?
A. W. A. Morgan.
Q. Mr. Morgan, were you employed during any period of time by the Bache-Denman Company in 1914?
A. I was employed a short while.
Q. How long did you work for them?
A. Something about two weeks, I guess.
Q. During what month?
A. The best I remember, I believe it was some time in July.
Q. When you were leaving the mine did you have any conversation with any union men at the Midland station?
A. Well, I had a conversation with a gentleman there, he said he was a union man, I don't know.
Q. What did he say to you?
A. He told me that if they let them,—
Q. First of all, what was he talking about, did you have much of a conversation with him?
A. Not a very long conversation with him; he was talking about unionism, and how it run, and so forth.
Q. Just go on and state what he said?
1679 A. He told me that if they let the mine run open, I believe is the way he spoke it, and hoisted and shipped coal, that it would entice other mines to do also.
Q. How did he happen to make this statement to you?
A. He was talking about this mine where I was working, telling me about running open down there, you know.
Q. Was he explaining unionism and union principles to you? A. Yes, sir.
Q. Was he making any effort to get you to join the union?
A. Yes, sir, he wanted me to join the union.
Q. Did he say anything to you about how you could join, as to the matter of expense?

A. He said if I would go join I could work it out at the mines.

Q. Work,— A. The fees out at the mine.

Q. Did he suggest that you could work anywhere else than you had been working?

A. I don't remember that he made mention of any certain place that I could work. I don't think he did.

Q. This remark about not permitting them to hoist and ship coal was made in the course of this discussion?

A. Yes, sir.

Mr. Lucas: Cross-examine.

Cross-Examination

By Mr. Warrum:

Q. When was your attention first called to this conversation? A. I don't remember.

1680 Q. That occurred in 1914, eight years ago at least and a little more. When was your attention first called to that conversation? A. When I was leaving the mine down there.

Q. I am aware of that, but have you talked to people since then? A. No, sir.

Q. Until when? A. Until right here.

Q. Oh, you talked to somebody before you got on the stand, didn't you?

A. I talked to this union man at Midland, as I left.

Q. Did you talk with anyone else since that time until you testified? A. Not that I remember of.

Q. Did you talk with any of these attorneys about the testimony you are giving? A. Yes, sir, just now.

Q. Have you been told to say "Yes" to this?

A. Oh, no.

Q. Did they tell you what they wanted you to testify to?

A. No, sir.

Q. You don't know how they happened to run onto you, and got this testimony out of you do you?

A. No, sir, I do not.

Q. How long were you in the mine?

A. Two weeks, about that.

1681 Q. Some time in June or July. Did you leave before the big battle? A. Yes, sir.

Q. What did you leave for?

A. I just simply left to go home.

Q. Where is your home? A. Mena, Arkansas.

Q. Did you leave to go home and stay home?

A. Yes, sir.

Q. There was a good deal of drinking in that camp, was there? A. Drinking?
Q. Yes, sir. A. I didn't know of any.
Q. Did you know of drinking and gambling going on in that camp?
A. No, sir, not when I was there, I didn't know about that.

Redirect Examination

By Mr. Lucas:
Q. Mr. Morgan, I was just out in the hall talking to you, was I not? A. Yes, sir.
Q. Had you seen me before today? A. No, sir.
Q. Did I come out and ask you certain questions?
A. I don't know that you did.
Q. Didn't I ask you certain questions out in the hall?
A. Yes, sir, I believe you did.
Q. What answer did you make,—did you then make
1682 the answer that you have made here today?
A. I think I did.
Q. And did I tell you to say just that on the stand?
A. No, sir.
Q. Did I tell you to say just that on the stand?
A. Yes, sir.

Mr. Warrum: My cross-examination did not suggest that, it was merely testing his memory.

Mr. Lucas: With that statement I will not press it, it certainly suggested that to me.

The Court: Stand down.

(Witness excused.)

1683 Mr. Drinker: We next offer from the United Mine Workers Journal—I am going to read a whole string of these,—from August 11th, 1910, page 4.

The Court: Is it such matter that should be read to the jury? Why not introduce them and consider them read?

Mr. Drinker: We want these for the jury; there are a whole lot that we will do that, but these are for the jury.

Mr. Warrum: We think it is immaterial, for the reason that the strike was long before this.

Mr. Drinker: This is on column 5, page 4, United Mine Workers Journal, August 11th, 1910 (reading):

"The Southwestern Interstate Coal Operators' Association's officers will go before the federal courts in the mining

districts of Missouri, Kansas, Oklahoma and Arkansas and ask for injunctions to prevent miners who are technically on strike from interfering with operation of the mines. This action of the operators was brought about by 400 union miners marching Friday to the three mines attempting to resume near Hartford, Ark., and prevailing on the men who had been employed under open shop rules to quit work. The operators at Hartford will attempt to resume again Monday morning. The miners there declare they can not do so."

Mr. Drinker: We next offer from United Mine Workers Journal of August 25th, 1910, on page 5, the article in column 1, or the portion of it that is marked, with the heading, "Mining News From Arkansas." (Reading):

1684 It was also rumored that the Arkansas mines would open under the open shop system. Prairie Creek No. 4, Central Coal and Coke Company tried to start a couple of weeks ago with the open shop and had thirty louzy pieces of humanity to try to start digging coal but they had a friendly visit of 1,400 union coal miners and they could not be seen any more—not even bosses could be found around the mines. I think these non-union men should have stayed and found out what the boys wanted. Maybe they wanted to know what kind of work it was and the bosses should have stayed by all means. The boys might have been looking for a job—I don't think. It was reported that the visitors at No. 4 Prairie Creek disturbed the peace. That is a lie. The boys went just as peaceably as if going to church, and when our county sheriff was called on for protection he told the company to quit blowing the whistle or sign the scale, and when asked for deputies he said, 'We have a few hundred idle miners you might get as guards for your property.' There is not going to be any violence on the part of the miners."

Mr. Drinker: We next offer from the United Mine Workers Journal, issue of July 9th, 1914, page 7, column 2.

Mr. McDonough (reading): "From Arkansas.

Fight on at Hartford.

Hartford, Ark., July 3.

1685 I wish to have a few words in the Journal in regard to the strike here at No. 4, Prairie Creek, for which they are scabbing, and furthermore new men are coming in from all over the country. Some think No. 4 is working under union conditions and I wish to help strangers out so they will not come to Prairie Creek No. 4.

The Bache and Denman Coal Co. have wires around the shaft and tents in the bull pen in which they have about 120 scabs and new ones coming in every day. The company has put the union miners out of their houses so they may have more room for more scabs. The men here are in tents in the backwoods, so do not let the labor agent talk you into coming to Prairie Creek No. 4. We are out to win and we intend to do so. We have a strong bunch of scabs here. We have scabs from Spadra, Ark., and U. S. gunmen who have come here from Colorado to guard the Arkansas scabs.

W. H. CLUCK."

1686 Mr. Drinker: We next offer from the United Mine Workers Journal, issue of July 23rd, 1914, page 4.

Mr. Warrum: The defendants object to the introduction of these records on the ground that under the rules of the Supreme Court they have no tendency to prove or sustain the contention of the plaintiff.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. McDonough (reading):

"The Truth About Hartford, Arkansas.

Attempts on the part of the hired army of the Bache-Denman Company, New Hartford, Ark., to emulate the Colorado gunmen militia brought about an outbreak on the part of the union miners, in which the gunmen were badly worsted.

When the Bache-Denman broke with the organization and locked out the union miners, the organization in District 21 furnished tents for the miners who were evicted from the company's houses.

The tents were on private grounds, rented by the organization; were as much the property of the men who live therein as the mine tipple, the offices, or any other of the buildings around the mine the property of the company.

More than that, the tents were, and are, the only shelter these men have—the only protection for their wives and children.

The operators recognize that these tent colonies indicate to any of the men they may bring in under false repre-
1687 sentations the fact that a strike is on. Many such men have turned back when they saw these tent homes.

For many weeks past the private army of the operators harrassed the miners and their families in their tent homes. Night after night the tents were shot into from the surrounding woods. Men and women going from the tent colony on business of their own have been waylaid and beaten. Many of the men have gone out from the camp and never returned. In fact, the conditions surrounding the miners' camp indicated that a repetition of the Ludlow horror was the intent of the gunmen.

All night Thursday the tents of the miners had been the targets of the hired thugs. Union miners living at a distance heard of the attack. Determined that a massacre like that of Colorado should not be perpetrated upon their friends and relatives, many men marched to the rescue. The sharpshooters were dislodged and followed to their camp; shots were exchanged all the way. The miners then determined to destroy the enemies' stronghold as a matter of protection for their homes, the only shelter of their families.

We do not advocate force as an argument. We would adjust all of our differences at the council table, if the choice was ours. But when it is necessary to protect our homes, our families from the attacks of hired ruffians who do not spare, as we have learned too well, the mother or the babe, to who murder and arson are 'all in the day's work', we applaud the men, would be glad to personally aid the men who defend their homes, even though it be necessary to fol-
1688 low their assailants to the shelter of the companies' buildings. Their rallying place, from which they come forth at night on their work of destruction.

There are no arguments we can offer to the hired gunmen of the company. Their work is to cast the bludgeon of force into the scales of reason.

We maintain, and those who have not been prejudiced by lying reports, and are not personally interested, will agree that the men of Arkansas had a perfect right to protect their homes and their loved ones from a like fate as that which overtook the victims of greed and violence at the Ludlow tent colony."

Mr. Drinker: Now, from the next week, July 30th, 1914, page 3, column 2, United Mine Workers Journal.

Mr. Warrum: We renew our objection; these communications were practically all after the suit was filed and the battle occurred, and under the ruling of the Supreme Court they do not sustain any contention of the plaintiff.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. McDonough (reading):

"Bravo, Arkansas Coal Diggers!

(By Eugene V. Debs.)

Hats off to the Arkansas coal miners!

They have routed the gunmen and delivered the bodyblow to the government by assassination.

For sometime there has been a strike on in the Hartford valley, where one, Franklin Bache, arbitrarily refused
1689 to deal with the union and insisted upon operating a scab concern. When the miners in his employ struck he promptly did what the operators in West Virginia and Michigan did, and what the operators in Colorado are now doing, namely, he ordered out his privately owned and armed gunmen and assassins, a small army, equipped with high power rifles, to slaughter the miners and their wives and babes and re-enact Ludlow.

But the miners had heard of West Virginia, and Michigan and Colorado, and they were not caught napping. They were not so well armed as Bache's red-light gunmen, but what they lacked in physical equipment was more than made up in moral stamina, and when the smoke of battle cleared away several gunmen were found to have bitten the dust and the rest vanished into mist and no trace of them has been found since.

Bravo, ye coal-digging slaves of the pits! You have done your duty in a heroic manner and deserve the applause of all honest men. May the miners everywhere catch your brave spirit and follow your inspiring example!

Government by private gunmen and the massacre of honest toilers must be put an end to in the United States.

We Socialists are for peace and we are steadfastly opposed to violence except when lawless violence is forced upon us and

we are compelled to fight for our lives and in defense of our families and homes.

In recent years the great trusts and corporations have gone entirely outside of the law to wage their lawless warfare on lawful labor unions. They have established their thug-
1690 recruiting agencies in all the large cities, through which they drag the slums to recruit their army of cut-throats and assassins.

This private army of the corporations, an absolutely lawless gang of man-killers, is armed with machine guns and high power rifles, and when workingmen go out on strike, as they have a lawful right to do, the corporation army of private thugs is at once ordered out to shoot them down like dogs and to insult, outrage and slaughter their wives and babes, as they did in Cabin Creek, Calumet and Ludlow.

To submit peaceably to such criminal invasion of their rights and such infamous outrages upon their manhood, workingmen must be sunk to fathomless depths of degradation and dead to every sentiment of self respect.

In the case down in Arkansas the scab operator, following the example set by the operators in other states, had his court injunction issued, ordered out his private army of man-killers, then sat himself snugly down in his easy chair to wait until the miners whose labor had enriched him lay weltering in their own blood.

But this particular operator was fooled. He got his lesson and he will not forget it. When the battle was over his private army was annihilated and his mines and tipples, to the value of $200,000, blown up with dynamite, a mass of ruins.

This is the way government by gun-men and assassins should be made to react upon the criminal master class every time they put it in operation.

Bravo, once more, Arkansas coal diggers! You have
1691 set a heroic and inspiring example to the working class of the nation.

The corporation gunmen who massacred workingmen, murder women about to become mothers and suffocate and roast babes as they did at Ludlow, are the most detestable of degenerates and the vilest of outlaws. They are more dangerous than mad dogs and should be treated accordingly. They have absolutely no right that any honest workingman is bound to respect.

They are private assassins and public enemies. They are the fomentors of strife, the inciters of riot and the shedders of innocent blood. They are a perpetual menace to peace and good government and they thrive only in violence and crime..

When these miscreants are set out to slaughter honest men, pillage their homes and kill even the babes in their cribs, it is time to take up arms against them.

If the law under capitalism permits lawlessness and violence on the part of the corporations and their private army of thugs, and workingmen are denied the protection of the laws, then nothing is left for them but to defend themselves and their loved ones, and if they have not the manhood to do this, they deserve to be crushed beneath the iron heel of their despotic masters.

Fred W. Holt, secretary of District 21 of the United Mine Workers, testified in court that he had shipped guns from McAlester, Okla., his home, to the miners in Arkansas, 'for the purpose of enabling them to protect their wives and children against the outrages of the private armed guards.'

All honor to Holt for having shipped the guns to the
1692 unarmed miners and for standing up in court like a man and admitting it!

If government by gunmen is to prevail, then liberty is dead and the labor movement a farce.

The Arkansas miners have throttled the monster and I appeal to the miners everywhere to arm themselves and prepare to do the same. They are strictly within their lawful rights in arming themselves against lawless invasion and in defense of their homes.

The next assessment that is levied by the United Mine Workers and the Western Federation of Miners should be levied for the raising of a gunmen defense fund for furnishing each member with a high power rifle and 500 rounds for the protection of their lawful rights, the defense of their wives and children and for wiping out government by gunmen and assassination in the United States.''

The Court: Now, is there any reason why any more of this that you have could not be stipulated into the record?

Mr. Drinker: Your Honor, it seems to us, in view of the testimony this morning it is important. I don't like to state what the purpose of it is, but I think it is apparent.

Mr. Warrum: Yes, it is apparent, and I move to strike from the record the extract just read from the communication by an outsider, and I base my motion upon the opinion of the Supreme Court.

Mr. McDonough: We had a conference during the noon hour, and we are going to introduce, without reading,
1693 a great deal of matter of this kind, and we hope to have another conference this afternoon or evening and do the same thing.

The Court: A dozen of these articles read will prove nothing more than one.

Mr. Drinker: One perhaps might be a mistake, and when it keeps up for about a year, it perhaps eliminates that possibility.

The Court: Oh, no. Gentlemen, we are about to take an adjournment until ten o'clock tomorrow morning. Under the admonition I have heretofore given you, you will pass out and return at ten o'clock tomorrow.

(Whereupon an adjournment was taken until Tuesday, October 23rd, 1923, at ten o'clock a. m.)

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1694 Tuesday, October 23, 1923, 10:00 A. M.

Pursuant to adjournment, at 10:00 o'clock A. M., on Tuesday, October 23rd, 1923, court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record:

The Court: Proceed with the trial.

Mr. Drinker: If the court please, we have agreed to extend the stipulation which we entered into to include a large number, some 30 witnesses, who are within the jurisdiction, and some of whom we could bring, so that their testimoney can either be read or considered read, irrespective of the fact that they are in the jurisdiction. The way the case has developed it made us feel that perhaps it is not necessary to burden the court and jury with hearing corroborative testimony, and we are going to stipulate that testimony into the record so it will be a part of the record.

Mr. Warrum: We don't stipulate them into the record. We will state to the court, as they are offered, that we make no objection that they are within the jurisdiction of the court.

We do reserve the right, as these depositions of this testimony is offered, to object to it.

Mr. Drinker: Of course I don't ask them to waive any objections at all, but the fact that they actually testified—

The Court: It will not be necessary at this time to read them into the record?

Mr. Drinker: Not for our purpose.

The Court: Do you insist on that?

1695 Mr. Warrum: Reading them into the record?

The Court: So you can take your objection as they are read, is all you wish?

Mr. Warrum: We will object to them as they are offered, as a whole.

The Court: All right. I always like to see enough time consumed in any case to present it, but in a trial like this, it is lengthy, and somewhat tedious, and very expensive, and considering the number that must engage in a trial, it is always carried on at some risk of sickness and death of those who are engaged in it, and it makes it a very burdensome matter to get along in the trial of a case and then have to suspend that trial and have another trial on some such ground. Of course the jurors come in here from the country, and are used to an active, outdoor life, and there is more or less danger of them becoming indisposed while leading this kind of a life, and of course there always is of members of the bar. They must be in good health to proceed with the trial, and also the court, and if you will do this in the most expenditious way I will appreciate it, and I know the jury will.

Mr. Drinker: The testimony of the following witnesses from the former record are offered, and I will give the stenographer the pages later. I have not them here, and would like them considered as read into the record as contained in the former record, with all the objections that are in that record—is that right, Mr. Warrum?

Mr. Warrum: The defendants waive any objection to
1696 the reading of the several depositions or statements from the former record on the ground that the witness is living within the jurisdiction of the court, but the defendants separately object to the introduction in evidence of any of this testimony, and each of the extracts from the former record of witnesses named, for the reason that under the rul-

ing of the Supreme Court the evidence has no probative effect, it is incompetent and immaterial, and will not throw any light on the contention of the plaintiffs on any issue in this case.

The Court: I will deny your objection here, and you save your exception, and will that save your record, with the exceptions and objections that are in this testimony and record?

Mr. Warrum: That is the trouble. I don't think it will, and your Honor does not think that it will.

The Court: I am not thinking, it is not my part of the trial.

Mr. Warrum: We will waive that, and do everything that we can to accomplish the situation that your Honor just uttered, and we will waive the objections to the separate questions, but object to the testimony as a whole of each particular witness, and would like for the record to show that as the offer is made of each witness we renew our objection.

The Court: That may be done.

Mr. Drinker: Then in this record wherever it says there is an objection to a particular question, that is withdrawn?

The Court: Yes, sir, but the evidence as a whole is objected to by the defendants, as each and every witness
1697 is offered.

Mr. Drinker: On the ground that it is irrelevant?

The Court: On the ground stated by counsel.

Mr. Drinker: What was that objection?

(Objection read by the reporter.)

Mr. Drinker: That is all right. Now, we offer the testimony of B. G. Moore—

The Court: Have you the pages of the former record? If not, in this list of witnesses whose testimony is offered in this way, I will allow some one working with you to pick out the pages in the old record, so that you say page so and so of the old record.

Mr. Warrum: That is perfectly proper, and we would like for the record to show each one offered. Now, this will be the complete record, direct and cross-examination, is that right?

Mr. Drinker: Yes, sir. Do I understand that the different objections to the particular questions in the former record are waived, or are they in there?

Mr. Warrum: I have waived any objection in the former record.

The Court: But preceding each one of these witnesses will go in the objection made here by counsel, and it will be marked overruled.

Mr. Drinker: Yes, sir.

The Court: All right.

Mr. Drinker: Now, we offer the testimony of B. G. Moore. I think Mr. Warrum has been over this and is familiar with it.

1698 The Court: Does that give the page?

Mr. Drinker: No, but I will give that to the reporter later on?

The Court: Why not now; have someone working with you give the page numbers.

Mr. Drinker: Two of these witnesses we want to call and as a couple of additional questions.

The Court: Now, just a minute. All these witnesses that you intend to examine this morning, call now, and let them stand and be sworn, and we will save that much time.

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ELMER BOHANNAN, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Lucas:

Q. You have given your name to the reporter, Mr. Bohannan? A. Yes, sir.

Q. Did you testify at the previous trial of this case?

A. Yes, sir.

Mr. Lucas: Now, your Honor, to shorten this, we will offer the testimony as it stands in the record at the present time, to be found at page 1421 of the record.

The Court: Very well, the record will show that the objection made by counsel is made to this evidence, and the ruling of the court upon it. Now, proceed.

(The testimony of the witness at the former trial, so offered in evidence, will be found at the close of his tes-
1699 timony on this trial.)

By Mr. Lucas:

Q. Mr. Bohannan, where were you located in 1914?

A. At Hartford, Arkansas.

Q. What were you doing in Hartford, Arkansas?

A. Operating a coal mine.

Q. Operating a coal mine? A. Yes, sir.

Q. Do you recall the trouble at Prairie Creek during that summer? A. Yes, sir.

Q. Do you recall—

Mr. Warrum: Now, these questions are in this testimony that has been offered. We absolutely object, and I earnestly insist that no witness shall be allowed to duplicate his testimony in this trial.

The Court: Oh, no, there is too much of it.

Mr. Lucas: I am placing the witness for the benefit of the jury, so that they can understand two questions that I am going to ask him.

The Court: Ask the two questions. It is difficult to try to make anything immortal by making it eternal.

By Mr. Lucas:

Q. Was your mine operating union or non-union?

A. Union.

Q. Do you recall the union miners engaged around your mine or elsewhere in Hartford discussing the Prairie Creek trouble?

A. I have heard them discuss it, yes, sir.

Q. What did they say with reference to the production and shipment of coal at that point?

1700 Mr. Warrum: Now, if the court please, the defendants separately object to this on the ground that it is leading and suggestive, and second it undertakes to have the witness characterize this situation, and give his opinion as to conversations covering a long period of time without drawing his attention to any particular time, place or person that made the statement, and for the further reason that it is an attempt to overthrow the ruling of the Supreme Court with reference to facts found.

The Court: Of course in cases of this character it is true that if a conspiracy has been established then whatever is said or done by any of the conspirators is evidence against all. but these witnesses are at his mine, and are no part of any alleged conspiracy.

Mr. Lucas: If I may suggest to your Honor, they are a part of this conspiracy, and that is the reason I asked that qualifying question.

The Court: How?

Mr. Lucas: His mine was located at Hartford, and all of the union miners are considered as conspirators in this case, and therefore the union miners at Hartford, in view of the testimony heretofore, are shown to have participated in this entire trouble.

The Court: Yes, sir, but I supposed you were connecting this case with the trouble that went on.

Mr. Lucas: That is exactly what I want to show; that is the reason I asked the qualifying question.

The Court: Very well.

1701 To which action and ruling of the court the defendants at the time duly excepted and still except.

By Mr. Lucas:

Q. Now, you stated your mine was operating union?

A. Yes, sir.

Q. Did these union miners work at your mine the days of that trouble at Prairie Creek No. 4?

A. On the 17th?

Q. On the 6th of April and 17th of July.

A. No, sir.

Q. Where were the miners that were engaged in operating your mine?

The Court: If you know where they were.

A. I don't know.

By Mr. Lucas:

Q. Did you hear them say where they were?

A. No, sir.

Q. They did not report for work on that day?

A. No, sir.

Q. How close is your mine to Hartford?

A. About 3 miles.

Q. Did the miners live in Hartford that worked in your mine?

A. Some did and some did not, some lived out in the country and some in the camp; we had company houses for them to live in.

Mr. Lucas: Now, I think as far as the miners that lived in Hartford, this witness would be as competent to state what they said as the previous witnesses.

The Court: He has not been asked yet.

By Mr. Lucas:

Q. Will you state what the union miners working at
1702 your mine were discussing during the period between April 6th and July 17th, 1914, with reference to the situation at Prairie Creek No. 4?

Mr. Warrum: The defendants renew their objection.

The Court: It is merely cumulative, but he can answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Do you understand the question?
A. What they would be discussing between the two periods, the 6th and the 17th?
Q. Yes.
A. Well, I have heard them often say they would not allow scab coal to leave the Hartford field.

Mr. Lucas: You may cross-examine.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused.)

(The testimony of the last above witness at the former trial, so offered in evidence, is in words and figures following, to-wit:)

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the
reason that under the ruling of the Supreme Court the
1703 evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your full name?
A. Elmer Bohannan.
Q. Where do you work?
A. At Clarksville, Arkansas.

A Juror: We do not hear him.

A. (Continuing) Clarksville, Arkansas.
Q. Speak up, Mr. Bohannan. How long have you lived in Clarksville?
A. Ever since about the 23rd of April last.
Q. Where did you live before that?
A. At Hartford, Arkansas.
Q. Were you running a mine down there near Prairie Creek No. 4 at the time of the trouble down there in April?
A. Yes, sir.
Q. Do you remember the riot they had over there April 6th? A. Yes.
Q. Did your mine run that day?
A. April 6th?
Q. Yes. A. No, sir.
Q. Why didn't it run?
1704 A. Well, the men didn't report for work, is all I can tell you why.
Q. Were you running under union conditions?
A. Yes.
Q. How many men did you employ there?
A. Something like a hundred.
Q. Do you remember the day of the battle, July 17th?
A. Yes, sir.
Q. Did your mine run that day?
A. No, sir.
Q. Why not?
A. I didn't have men to run it.
Q. They did not report? A. No, sir.
Q. What was the first you heard or saw of the battle?
A. Well, I saw the smoke of what we thought was No. 3 tipple burning.
Q. Did you go over there then? A. Yes.
Q. Did you find it was No. 3 tipple burning?
A. Yes.
Q. What time did you get there?
A. I judge it was about eleven o'clock.
Q. With whom did you go?
A. A fellow by the name of Connister, Dave Connister.
Q. Were did you go?

A. Well, we drove up the county road and stopped
1705 about Prairie Creek

Q. Were there many people in Prairie Creek at that time, at ten o'clock? A. Yes, quite a few.

Q. How many?

A. I can't tell I didn't count them; I judge there were two hundred or three hundred probably.

Q. How many of them had guns?

A. I could not tell you that.

Q. You did not count those?

A. No, sir, I didn't count them.

Q. Were there a good many?

A. Yes, quite a few.

Q. Would you say half of the people there had guns?

A. Well, I judge about half of them did, yes, sir.

Q. Who did you see there that you knew?

A. Well, I saw Clint Burris for one.

Q. Did Clint Burris have a gun?

A. I could not say whether he did or not,—I would not say.

Q. You would not say he did not have a gun, would you?

A. I would not say that he did have a gun or did not have a gun, no, sir.

Q. What were these men doing at Prairie Creek?

A. Chasing around there up and down the road and through the woods.

Q. What were they doing, chasing around through the woods?

A. Oh, well, I could not tell you what they were doing,
1706 they were just walking around then.

Q. Was there any shooting going on around there?

A. Yes, sir, some shots were fired, but I cannot tell you who it was. I did not see them.

Q. Was the shooting going on into No. 4?

A. No, sir, the shooting was from No. 4.

Q. Was there any into No. 4?

A. I could not tell you whether they were shooting in that direction or not. I could just hear the sound of the guns.

Q. How long did you stay there?

A. Well, about two hours I suppose.

Q. And then you went home?

A. Yes, sir."

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WILLIAM V. WOMACK, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Lucas:

Q. Mr. Womack, what is your occupation or profession?
A. I am a minister.
Q. Where were you in 1914?
A. At Hartford.
Q. Did you have a parish at Hartford at that time?
A. Yes, sir.
Q. Did you testify in this case at the previous trial?
A. Yes, sir.

Mr. Lucas: Now, we offer the testimony of Mr.
1707 Womack, as it appears in the record at page 1449, and I want to ask this additional question.

Mr. Warrum: To that offer we object because it does not identify it. His testimony begins at 1449 and runs to 1455, and the offer should be made in that way, because the reporter otherwise would copy that one page.

Mr. Lucas: I would be glad to incorporate that in my offer.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

(The testimony of the witness at the former trial, so offered and received in evidence, will be found at the close of his present testimony.)

By Mr. Lucas:

Q. Mr. Womack, do you recall being questioned at that time about the rumors current at Hartford, the rumors about non-union guards from Prairie Creek coming to Hartford?
A. You mean on the former trial?
Q. Yes, sir.
1708 A. Yes, sir.

Mr. Warrum: Now, they have introduced this evidence and this evidence your Honor will see, by looking at the

pages of it, that he testified as to the rumors; that there were rumors that Frogtown had been shot up; rumors about insulting girls on the public highway and arresting people on the public road, and drawing their guns on people, and now it is an attempt to put this witness on the stand, after they have introduced his testimony, and impeach him.

Mr. Lucas: No, we are not trying to.

Mr. Warrum: We object on the ground that it is an impeaching testimony, and they have already introduced his evidence, and are now seeking to avoid it.

The Court: Let's hear the answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

By Mr. Lucas:

Q. You have heard the part of your testimony read by Mr. Warrum? A. Yes, sir.

Q. Regarding the rumors at Hartford?

A. Yes, sir.

Q. Were you a man of family at that time?

A. Yes, sir.

Q. What was your family?

A. Wife and one child.

Q. Did you have any substantial fear that the guards were coming into Hartford to destroy the property and take
1709 lives, as these rumors had indicated?

Mr. Warrum: Defendants renew their objection to these questions and the evidence sought thereby, for the reasons stated.

The Court: Objection sustained. He is no part of this conspiracy; he is not a defendant, and not bound.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Mr. Lucas: We offer him to show—

The Court: Never mind.

Mr. Lucas: That is all.

Mr. Warrum: No questions.

(Witness excused.)

(The testimony of the witness at the former trial, so offered and received in evidence, is in words and figures following, to-wit:)

"Direct Examination

By Mr. Hull:

Q. What is your full name?

A. William Vance Womack.

Q. What is your profession?

A. Minister.

Q. You have a church here in Fort Smith?

A. Yes, sir.

Q. How long have you been here?

A. Three years, the last of this month.

Q. What denomination?

A. South Methodist, Dodson Avenue.

1710 Q. Were you in 1914 living in Hartford?

A. Yes, sir.

Q. You had two parishes there, I believe?

A. Hartford and Midland.

Q. Do you remember seeing some of the Bache-Denman employees at Midland loading some goods one day?

A. Yes, sir.

Q. Along in the spring of 1914?

A. Yes, sir.

Q. Will you state what you saw at that time?

A. I had gone up to the Midland Valley depot to see one of my members, who was agent at the depot, and when I got there, he was out in a car, seeing to the loading of some stuff into a wagon, and I waited for him, to get an idle moment to speak to him, and I found that three employees of the mine at Prairie Creek were loading some stuff, and some bread boxes. They finished their task and started off, and just as they started off, before they started, a crowd of men had gathered in the street out in front of them, and when the wagon started out, I saw one or two of the men pick up rocks and begin to throw at the wagon.

Q. Do you know any of those men?

A. I know only one, I think, Foster Bean, was the only one that I recognized.

Q. Do you know where he worked?

A. No, I don't, he was one of the union miners, there, but I don't know what place he worked at, and the wagon drove off down the road about 50 or 75 yards and stopped,

1711 and one or two of the men got out to tie the boxes on the wagon, and the union miners continued throwing at them, and one of the men stepped around to the front, and took a gun out from under the seat, if I remember correctly,

and stepped back towards the rear of the wagon, and stood there for a few minutes.

Q. Point the gun at anybody?

A. No, sir, he did not, he held the gun down, possibly about his waist, or lower, with the muzzle pointing toward the ground.

Q. Then what happened?

A. Then the city marshal, and one or two other officers, I don't remember who they were, came around the store and demanded them to stop, and put them under arrest, and I don't remember anything further that happened at that time.

Q. Did you see there some officers arrest any of the rock throwers? A. No, sir.

Q. Were you at Hartford the night before the battle of July 17th? A. Yes, sir.

Q. What were the conditions in the streets of Hartford that night?

A. Very restless. I was not on the street a great deal myself, but I knew the conditions were torn up considerably.

Q. Now, on the morning of the battle, do you know whether the stores were generally closed in Hartford?

A. That was my impression.

Q. Do you know why they closed?

A. In order for the men to go to Prairie Creek, so I understood.

Q. Did you hear any threats made that the merchants
1712 did not close their stores?

A. I didn't hear any threats made, but I heard one man say that if they didn't close their stores it would mean the ruination of their business.

Q. Did you see bunches of men with guns that morning?

A. No, I can't say that I saw any bunches, I saw two or three men with guns.

Q. Did you see a procession of men going and coming to and from Prairie Creek?

A. There were a good many people going back and forth. I didn't live on the main road to Prairie Creek, however, but there were scattered bunches going back and forth all morning.

Q. You say you saw two or three with guns?

A. Yes, sir.

Q. Do you know their names? A. Yes, sir.

Q. Who were they?

A. Ernest Nein, passed with a rifle, coming from that direction.

Q. Do you know whether that is the same Ernest Nein that pleaded guilty here in the Federal Court to a criminal charge?
A. I think so.
Q. Who was the other man, Mr. Womack?
A. My neighbor, Mr. Mealer.
Q. Do you know his first name? A. Ed Mealer.
Q. Do you know where he worked?
A. He worked at Central, there in town.
Q. Central No. what?
1713 A. I couldn't be positive as to the number. It is their largest mine there at Hartford.
Q. Is that the Central Coal & Coke Company's mine?
A. Yes, sir.
Q. That is a union mine? A. Yes, sir.
Q. Where was he going, and what was he doing?
A. He went in the direction of Prairie Creek?
Q. With a gun?
A. Yes, sir, with a shotgun.

Cross-Examination

By Mr. Warrum:
Q. You were living in Hartford in July, 1914?
A. July, 1914, yes, sir.
Q. How long had you lived there?
A. I moved to Hartford the first of December, 1911, I believe it was.
Q. And you lived there for some three years?
A. Yes, sir.
Q. Did you have a church there? A. Yes, sir.
Q. And you say that the night before the 17th the people were restless in Hartford? A. Yes, sir.
Q. Meeting around on the streets, crowds of them.
A. There was general turmoil all around there, I was not on the streets much.
1714 Q. The impression you got of the restlessness was the crowd that gathered, from what you did see?
A. Yes, sir, and from what I heard also.
Q. Was that the first night that you noticed any restlessness among the people at Hartford with reference to the trouble at Prairie Creek? A. I don't remember that.
Q. Do you remember the Sunday before July 17th, or rather during the night of the Sunday, that a number of people came in from Frogtown and reported that the town had been shot up?
A. I remember the report, but I don't remember as to what it was.
Q. Did you see any of the people that came in?

A. No, sir.

Q. Your attention was not called to any of the people that come from Frogtown to Hartford that night?

A. No, sir.

Q. Did you hear any talk about it the next day?

A. Yes, sir.

Q. And that was Sunday before this July 17th?

A. I couldn't say what day it was, I don't remember.

Q. Well, it was about a week before?

A. I presume so.

Q. And a few nights later there was a similar exodus from Frogtown to Hartford, was there not?

A. I don't remember as to that.

Q. You don't remember as to that?

1715 A. No, sir.

Q. Was that the occasion of some of the restlessness that you speak of in Hartford? Comment on the shooting up of Frogtown, and driving the people to Hartford, did that cause a part of that restlessness?

A. There was more or less restlessness there at that time, and for several days.

Q. And for several days after that?

A. Yes, sir, I couldn't say how long before, I don't remember.

Q. They threw out guards around Hartford, to prevent any shooting up of that town, did they?

A. I think so.

Q. Do you remember when that was? A. No, sir.

Q. Did you talk with any of the people that guarded the town? A. No, sir.

Q. Did you see any of them that were guarding the town?

A. No, sir.

Q. You just heard that they were watching the town?

A. Yes, sir.

Q. Now was this feeling of restlessness confined to the union miners, or was it shared by the people generally in the town?

A. Shared by the people generally.

Q. And how large is Hartford?

A. It is a place of about 2500.

Q. Now, apart from the statement—by the way, who was it told you that the stores had orders to be closed?

1716 A. One of the dry goods merchants there.

Q. He told you himself?

A. Yes, sir. It was after the procession had gone there, I was talking to him about it, and he said that they had to do it out of self protection.

Q. Did he go out to Prairie Creek?
A. I understand that he did.
Q. On July 17th? A. Yes, sir.
Q. And other merchants and business men went out the morning of July 17th, did they not?
A. So I understand, I didn't see them go.
Q. That was the information that you got in connection with other information that you have testified about?
A. Yes, sir.
Q. And they were there from this town of Midland that you have spoke about, too, were they?
A. I heard they were.
Q. There were a good many rumors about the conduct of the guards at Prairie Creek circulated in that vicinity, was there not? A. You could hear anything.
Q. That is true, and I am not asking you about the truth or falsity of the rumors, but were there rumors there?
A. Yes, sir.
Q. About them insulting women and girls on the highway?
A. Yes, sir.
Q. And arresting people on the public roads?
1717 A. Yes, sir.
Q. And drawing their guns on people?
A. Yes, sir.
Q. And making target grounds of the farms down there and shooting over the fields?
A. I don't know that I ever heard that.
Q. Did you ever hear, in talking of the conduct of these guards, and the condition that prevailed down there, and the conduct of the guards, the reputation of the women that were in the camp? A. No, sir.

Redirect Examination

By Mr. Hull:

Q. Mr. Womack, you said that this merchant told you that they had to close their stores in self protection. Did you gather from that this was protection from the 25 non-union men in Mine No. 4, or protection from the union?
A. It meant, as I inferred from him, that if they did not go as the union men had asked them to go, I understood him that the union men had come to him that morning and asked him to go with them in the procession that afternoon, and he said, 'We had to go or our business was gone', since their business depended largely on the union men.
Q. As a citizen of Hartford did you have any real fear or apprehension that Hartford was going to be shot up by the 25 or 30 men at Mine No. 4? A. No, sir.

Recross Examination

1718 By Mr. Warrum:

Q. When you say you inferred that, can you now give the jury the statement or the conversation that this merchant had with you from which you drew that inference?

A. No, sir, after a period of time, I cannot give the conversation. He was one of the members in my congregation, one of the stewards, and I remember it that way, in talking over the situation, but I don't remember what he said or what I said.

Q. He went out that morning to Prairie Creek?

A. Yes, sir.

Q. And you got the inference from that that he was under duress, not only to close his store, but to go out and take a part in the battle? A. Yes, sir."

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JOHN T. LAWS, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Have you given your name to the reporter?

A. Yes, sir.

Q. What is your present position, Mr. Laws?

A. I am secretary and credit manager of the Atkinson-Williams Hardware Company, Fort Smith, Arkansas,

Q. How long have you held that position?

A. Oh, 25 years or more.

1719 Q. Have you in response to a subpoena duces tecum brought with you certain records of that company?

A. Yes, sir.

Q. Were those records under your control and custody at the office? A. Yes, sir.

Q. Have you produced certain orders that were described in that subpoena? A. Yes, sir.

Q. Will you produce them now, so they may be identified and offered in evidence?

Mr. Warrum: They are referred to in the examination in the former record, and what is the purpose of duplicating this testimony? Now in his former testimony, found on pages 1686 and succeeding pages, Mr. Hull, one of the attorneys, reads from the orders in full, and testifies to the check on the First National Bank of McAlester, and what is the purpose of duplicating the testimony already in the record? The de-

fendants separately object to this testimony because it is already in the record under the agreement.

The Court: We have gone pretty fully into this matter from another source.

Mr. Lucas: We can shorten this. I will ask one or two questions and ask the other counsel to let the record stand as it was before. I want to show you these orders—

The Court: Now, are they the same orders that are in this record?

Mr. Lucas: No, sir, they have only been identified.
1720 They were identified on Saturday morning by Mr. Morgan.

The Court: That is not the question; are they the same that were in the record before?

Mr. Lucas: Yes, sir.

Q. (By Mr. Lucas) Are these your originals?
A. Yes, sir.
Q. Would you like to have them back?
A. When you get through with them.

Mr. Lucas: We will ask leave to withdraw the originals and let those in the former record stand as the exhibits. At this time we offer the previous testimony of this witness as it stands in the record, found on pages 1686 to 1690, both inclusive, of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any if this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

1721 Q. What is your name? A. John Laws.

Q. What is your present position?

A. Secretary and credit man of the Atkinson-Williams Hardware Company.

Q. Atkinson-Williams Hardware Company of Fort Smith? A. Yes, sir.

Q. How long have you held that position?

A. Fifteen or twenty years; fifteen years.

Q. You were holding it in 1914, in June?

A. Yes, sir.

Q. Have you in response to a subpoena duces tectum, served on you in this case, produced certain records of your company? A. Yes, sir.

Q. Kept under your control and custody?

A. Yes, sir.

Q. Will you produce certain order sheets, covering shipments or orders of guns and ammunition shipped to John Mastell or Oscar Layton in the month of June, 1914, Is there an order there of June 10th?

A. I have an order of June 10th shipped to John Mastell, shipped to Prairie Creek, Arkansas; that was shipped out of stock.

Q. Do you remember how that order came to your office?

A. It was 'phoned in by our traveling man.

Q. Mr. Morgan? A. Mr. Morgan.

Q. This is the original order sheet?

1722 A. Yes, sir, and the shipment was made from that sheet.

Q. Will you detach that from your book and let it be offered as an exhibit in this case?

A. It it a little hard to do, but I guess I will have to do it. I will have to cut it out.

Q. Will it tear out? A. Yes, sir, it will tear out.

Q. Have you this same form now? A. Yes, sir.

Q. Will you furnish me with three or four copies of this. and I can have it copied and return this to you?

A. Yes, sir.

(The paper referred to, marked Exhibit 54, is in words and figures following, to-wit:)

Mr. Hull: I will read this to the jury, it is on the order sheet blank of the Atkinson-Williams Hardware Company, Fort Smith, Arkansas; sold to John Mastell, Prairie Creek, Arkansas,

| | | | | | | |
|---|---|---|---|---|---|---|
| 3 | 25 Cal. Rem Auto rifles | #8-A | $23.00 | $69.00 | 5691. |
| 2 | 30 Cal. " " " | #8-A | $23.00 | $46.00 | 3794 |
| 2 | 35 Cal. " " " | #8-A | $23.00 | $46.00 | 3794 |
| 540 | 35 Cal. " " | Ctgs. | 2.81 | 15.18 | 1242 |
| | | Pd. Frt. | .37 | .37 | |
| 1 | box guns and S. A. A. 122# | | | 176.55 | |

Lawrence.

Q. You stated, I believe, that that order was telephoned in by Mr. Morgan?

A. Yes, sir.

1723 Q. Have you an order there of June 17th,—please state the next order.

A. June 13th. This was June 10th, and I have one on the 13th.

Q. Will you please state how that order came into your office?

A. That was mailed in by our traveling man, Mr. Ed. Morgan, and he had made a notation on the bottom of it that it had been ordered by express from the factory. It says, 'Expressed from factory to Hartford, Arkansas.'

Q. And that was shipped by the Remington Arms Company of New York? A. Yes, sir.

Mr. Hull: (Reading) On the order sheet of the Atkinson-Williams Hardware Company, Fort Smith, Arkansas.

2505 Shipped to John Mastell, Hartford, Arkansas, June 13, 1914, 10 25-35 Rem. Auto Rifles, $23.30, $230.00 $189.75 Expressed from factory to Hartford, Arkansas.

Q. Referring to your books of account, Mr. Laws, can you state when and how those two invoices were paid?

A. $176.55 was the other one, and this was $230.00; that was paid on June 18th of the same year.

Q. Is the ledger entry posted in your handwriting?

A. I will see in a moment, I think possibly it is. Yes, sir, the cash book entry is in my own writing.

Q. And will you state what that entry is, just read it in to the record, giving the date and the page number.

A. June 18, 1914, I received a check for $398.42, on which was allowed a credit of 2% for cash, making a total credit to John Mastell of $406.55.

1724 Q. Will you state what that total credit of $406.55 covered?

A. It covered these two orders that we have just read.

Q. Will you state what the item of $398.42 covered?

A. That was the net amount after deducting 2% for cash.

Q. It covered these two invoices, discounted at 2%?

A. Yes, sir.

Q. Do your records show the bank upon which, or the conditions upon which that check was drawn, or that draft?

A. Yes, sir, I think so.

Q. Reading from your bank deposit slip, will you state,—

A. On June 18th, 1914, I deposited with the First National Bank a check drawn on McAlester, Oklahoma, for $398.42.

Q. You don't know whose check that was? A. No, sir.

Q. There is no notation there as to whether it was a check or draft? A. No, sir, it just says McAlester.

Q. Will you find from your records the next order sheet, ordering goods shipped to John Mastell or Oscar Layton?

A. June 22nd, shipped to Oscar Layton, Hartford, Arkansas.

Q. State, so the jury can hear it. Will you state how that order came into your office?

A. It was mailed by our traveling man, Mr. Morgan. This order was mailed in by Mr. Ed. Morgan.

Q. Why was some of these notations at the bottom crossed out, if you know?

A. That is so that the bill clerk, would not put those
1725 notations on the bottom of the order. They are things that are not necessary for the bill clerk, and are usually scratched out, so they won't be put on the invoices. It is just for the office information, when they are turned in by Mr. Morgan.

Q. But these notations were on the invoice when turned in to you by Mr. Morgan? A. Yes, sir.

Mr. Hull I offer this, being a bill heading of June 22nd, 1914, Atkinson-Williams Hardware Company. (Reading):

| | | | | |
|---|---|---|---|---|
| 10 | #14-A Cal. Rem. Repeat Rifles. | $16.50 | $165.00 | $140.25 |
| 3500 | 25 Rem. Auto Cart. M. C. | 2.81 | 98.35 | |
| 1000 | 30 " " " " " | 3.23 | 32.30 | |
| 500 | 35 " " " " " | 3.57 | 17.85 | |
| 200 | 32 " " " " " | 3.23 | 6.46 | |
| 100 | 30 Springfield 1903 Model | 4.68 | 4.68 | 163.42 |
| 1000 | 45-70 Government 405 Gims | 3.83 | 38.30 | |
| | | | 362.94 | 303.67 |

H. B. Hill wired this to the factory for me. By express, be sure and hold this invoice for me.

The Witness: Up above you can see who it was shipped to.

Q. I read that. Will you state how that shipment was paid for?

A. On July 1st, 1914, we received a check for $355.68.
Q. Did that cover this invoice discounted at two per cent?
A. Yes, sir.
Q. Can you tell from your bank deposit slip on what bank that check or draft was drawn?

A. On July 1st, I deposited in the First National
1726 Bank, check drawn on McAlester, for $355.68.

Q. Can you state, Mr. Laws, whether or not the first shipment of seven guns of June 10th was shipped out of your stock? A. It was.
Q. And you know that it was shipped to John Mastell?
A. Yes, sir.
Q. And the other shipments, as I understand it, were shipped from Remington Factory?
A. The other two were, yes, sir.
Q. But all on orders from your salesman, Mr. Morgan?
A. Yes, sir."

The Court: If in this evidence that is stipulated in, there are copies of these exhibits, why should [—] now put the originals in?

Mr. Drinker: That is just what we were arranging. We want to get the original check and show it to the jury.

The Court: It must have been the originals or it would not have been in the record. The jurors know something.

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Mr. Drinker: We offer the testimony of MR. JOHN H. HAYDEN, found on page 1835 of the old record.

Mr. Warrum: All of his testimony?

Mr. Drinker: Yes, sir, with the exhibits, under the stipulation.

Mr. Warrum: Now, if the court please, they have in this record Mr. Hull reading these exhibits, and we made this stipulation, or rather an agreement, that in view of the
1727 consideration expressed, for the court and for the jury, as well as for ourselves, this evidence could be considered as read, but we do object to plaintiffs encumbering the record with duplicates of testimony that has already been introduced, and I will ask permission of the court, if continued, to withdraw any agreement that we have made.

The Court: I can not see how it will help you.

Mr. Drinker: We want to show it to the jury; I am sure Mr. Hull did not have it and show it to the jury. If you don't want the jury to see it, all right.

Mr. Warrum: I don't care about it.

The Court: It is not a question of that.

Mr. Drinker: I just want the jury to see it was offered in evidence, but I will put it back in here.

The testimony of that witness is considered read into the record without actually reading it.

The Court: Very well.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

1728 To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. What is your name, please?

A. John Hayden.

Q. You are the president of the Hayden Sporting Goods Company at McAlester, Oklahoma, are you? A. Yes.

Q. You held that position in June and July, 1914?

A. Yes.

Q. Have you brought with you here, in response to a subpoena duces tecum, your cash book or day book showing a certain sale or sales to Fred Holt, secretary of District 21, United Mine Workers of America, made in June, 1914?

A. Yes.

Q. Will you turn to that day book, to the page where those bills are set out? A. What date was that?

Q. That was June 17th, page 198 of your book.

A. Yes, sir.

Q. First, Mr. Hayden, will you state who bought these goods, who ordered them? A. Mr. Fred Holt.

Q. Do you know him personally? A. Yes, sir.

Q. On June 17th, what goods did he buy of you?

1729 A. Why, rifles and cartridges.

Q. Will you state how many rifles he bought from you? A. He bought nineteen and nine.

Q. What kind were those?

A. They were 45-70 Springfield rifles.

Q. Those were the old government Springfield rifles?

A. Yes, old discarded government guns.

Q. What other guns did he buy that day?

A. He bought two 25 calibre Remington Automatic rifles, three 30 calibre and 4 35 calibre.

Q. How much ammunition did he buy?

A. He bought 50 [moxes] of 45-70 cartridges, 20 in a box; 10 boxes of 25 and 15 of the 30 calibre, and 20 [moxes] of 35.

The Court: How many does a box contain?

A. 20.

By Mr. Hull:

Q. 20 cartridges? A. Yes, sir, 20 cartridges.

Q. Will you state where those goods were shipped?

A. They were shipped to Hartford, Arkansas.

Q. Do you remember to whom? A. Oscar Layton.

Q. Either on the next day or two days later did you sell some more guns or ammunition to Mr. Holt?

A. Yes, sir.

Q. State [whar] you sold and when it was.

A. Two 38 calibre automatic pistols and two boxes of cartridges for them.

1730 Q. That amounted to how much?

A. That amounted to $34.50.

Q. And on June 17th have you overlooked two more items you have not read?

A. June 17th there was one box of 30 Springfield army cartridges and three and one-half boxes of 30 cartridges.

Q. Do you remember how those goods were paid for, Mr. Hayden? A. Yes, sir.

Q. Will you state what you received in payment for them?

A. United Mine Workers check.

Q. I will show you, Mr. Hayden, Plaintiffs Exhibit No. 60 and ask you if you have seen that check before?

A. Yes, sir.

Q. Was that the check received by you from Mr. Holt in payment for these guns and ammunition?

A. Yes, sir.

Mr. Hull (reading):

'United Mine Workers of America, District 21. No. 76
F. W. Holt, Secretary-Treasurer.
McAlester, Oklahoma.

McAlester, Oklahoma, June 30, 1914.

Pay to the order of Hayden Sporting Goods Company, $411.99 Four Hundred eleven and 99/100.....Dollars.

UNITED MINE WORKERS OF AMERICA, DISTRICT 21.
F. W. Holt, Secretary-Treasurer.

Countersigned P. R. Stewart, President

Drawn on the Oklahoma State Bank, McAlester, Oklahoma.'

1731 Q. This is endorsed by you?

A. Yes, sir.

Q. Mr. Hayden, when were you subpoenaed in this case?

A. I don't know—about three weeks ago.

Q. During this last three weeks have you received certain letters regarding your testimony in this case?

A. Why, I have received some letters, yes.

Q. From whom were those letters, if you know?

A. I cannot absolutely say. One I find out was from yourself, I received a letter from you and I don't know, but I think I received letters from the other attorney, too. I don't know, I could not say; from someone connected—I could not say positively because I did not read any of them.

Q. You did not even read my letter, did you?

A. No, sir.

Q. But your best impression and best recollection is that some of those letters were signed by attorneys for the Union?

A. I could not state.

Q. What is your best recollection?

A. Well, I absolutely could not say.

Q. State whether or not some man has come to see you within the last three weeks in regard to this case.

A. Not within three weeks.

Q. When was it?

A. It was within the last three months or four months.

Q. What did he say to you?

A. He wanted to know about this.

1732 Q. What did he say to you as to who he was?

A. Well, he said he was representing the defendants in this case.

Q. Did he give his name?

A. No—I think he did give me a card.
Q. Have you that card? A. No, sir.
Q. Have you it in McAlester? A. No.

Cross-Examination

By Mr. Covington:

Q. Mr. Hayden, you testified in the contempt case before in this court room, didn't you?
A. No, sir, I did not. I testified before the Grand Jury was all.
Q. Weren't you here? A. Sir?
Q. Didn't you testify here before Judge Youmans?
A. No, sir, this is the first time I have been in the court room.
Q. Didn't you bring your bills over here and introduce them and put them in the record?
A. I absolutely did not.
Q. You did not? A. No, sir.
Q. Did you get any letter from Covington and Grant about this matter? You said you had something from some attorney.
A. I cannot say, just as I stated before.
Q. Don't you know that you did not get any letters from us and never have had a line from us at all about it?
1733 A. I don't think I did, not that I know, because any letter I got and anyone I talked to concerned this case —I didn't talk to anyone.
Q. Did you ever speak to either one of us?
A. No, sir.
Q. You do not know either of us? A. No, sir.
Q. Am I the man that came to you? A. No, sir.
Q. On the 6th day of July, eleven days before this battle, those guns were shipped back to McAlester, weren't they?
A. Why, I don't know—no, sir.
Q. Didn't Fred Holt take you up there and show you the boxes and ask you to take them back and pay him his money?
A. No, sir, he did not."

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Mr. Drinker: Now, we offer the testimony of H. B. Hill, in the form of a deposition, from pages 1651 and 1659 of the old record, both inclusive, and wish to consider that read.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and ex-

tracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of the
1734 plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Counsel for Plaintiff:

Q. State your name. A. H. B. Hill.

Q. What is your present business?

A. In the cigar business and oil business.

Q. In Oklahoma City? A. Yes, sir.

Q. How long have you been here, Mr. Hill?

A. About three years.

Q. Were you in 1914, in the month of June, factory salesman for the Remington Arms Co?

A. Yes, sir.

Q. Do you remember certain shipments of guns ordered from your company and shipped to John Mastell and Oscar Layton? Or either of them? At Hartford in June, 1914?

A. I do not remember about the date but I remember the shipments were made about the last of the time of my residence in McAlester.

Q. I show you a paper, being an order blank of the Remington company, already marked in a previous deposition: 'For identification, Ryerson, Exhibit No. 3, September 18th, 1917', and ask you if that order slip is in your handwriting?

A. Yes, sir.

1735 Q. Referring to that exhibit I will ask that it be marked by the stenographer in this deposition for identification: "Hill Exhibit No. 1 of October 19th, 1917'. I will show you, also, another order slip already marked in another deposition, for identification, 'Ryerson Exhibit 3, September 15th, 1917', and ask you if that is in your handwriting?

A. Yes, sir.

Q. I will ask that that be marked for identification in this deposition: 'Hill Exhibit No. 2 of October 19th, 1917'. I will show you, also, two other order slips already marked in another deposition: 'For identification, Ryerson Exhibits 8 and 9, respectively, of September 18th, 1917', and ask you if they are in your handwriting?

A. Yes, sir.

Q. I will ask that they be marked, respectively, exhibits in this deposition for identification: 'For identification, Hill Exhibit No. 3 and 4, of October 19th, 1917'. I will ask you to state what these documents, these four documents identified by you, relate, referring you first to your Exhibit No. 1?

A. This order was given to me by Ed Morgan for John Mastell of Hartford, Arkansas.

Q. Who was Ed Morgan?

A. Representative of Atkinson-Williams Hardware Company.

Q. What did you do in relation to that order?

A. I do not remember now.

Q. Did you wire that order in to the New York office of the Remington Arms Company?

1736 [—]

Q. This order telegraphed to the company.

A. Yes, sir.

Q. Referring to your exhibit No. 2, the next order exhibited in that volume?

A. This order was also given to me by Ed. Morgan of the Otkinson-Williams Hardware Company to be shipped to Mastell.

Q. What did you do in relation to that order?

A. This order was telephoned to jobber.

Q. To Atkinson-Williams of Ft. Smith?

A. Yes, sir.

Q. Referring to your exhibit number [—] you may state to what that applies?

A. This order was given to me by the same party, Mr. Morgan of Atkinson-Williams Hardware Company, and shipped to Oscar Layton, Hartford, Arkansas.

Q. What did you do with reference to that order, 'Exhibit No. 3'? This order went through the regular channel?

A. Not that I remember.

Q. Did you mail it to the office?

A. I mailed a copy to the office.

Q. You mean by 'the regular channel', is that the regular course of business of your company at that time?

A. Yes, sir.

Q. Referring to 'Exhibit No. 4', to what does that apply?

A. This order was given to me by Mr. Morgan of the Atkinson-Williams Hardware Company and shipped to Oscar Layton, Hartford, Arkansas.

1737 Q. What did you do with that?

A. Sent through the regular channel.

Q. Mailed to the company by you?

A. This is merely a copy.

Q. How does that order get to your company?

A. This is filled by the jobber.

Q. You are referring now to what exhibit?

A. No. 4. And it also applies to No. 3.

Q. Referring to Exhibit No. 1, will you state, if you can who the purchasers of that order were? Or who the purchaser was? A. The purchaser was John Mastell.

Q. What do you mean by 'purchaser'?

A. The man to whom it was shipped.

Q. John Mastell is the man whose name appears on the line after 'shipped to'? A. Yes, sir.

Q. Will you refer to the last line on that order, Exhibit No. 1, and tell the court, if you can, who the purchaser was, as stated in the line after the word 'signature of purchaser'?

A. Well, I do not know about this deal. I can not remember about that part of it.

Q. What does that order state as to the signature of the purchaser?

A. States: 'Federation of Labor. Holt.'

Q. Did you put that on there?

A. I do not remember of it.

Q. Is that your handwriting?

1738 A. It seems to be.

Q. You do not remember putting that on there? Or why you did? A. No, sir.

Q. Referring to Exhibit 2, does the same answer apply to the notation on the bottom of Exhibit 2? 'Federation of Labor. Holt'? A. Yes, sir.

Q. Mr. Hill, did you know who the purchaser of those guns and ammunition was?

A. I did not at the time. No, sir. As I remember.

Q. When did you first learn who the purchaser was?

A. I was told by Mr. Morgan.

Q. When was that?

A. I can not remember, exactly.

Q. About how long after the order was wired in to the company? A. I do not remember that.

Q. Would you say it was a few days? Or a month? Or six months? A. I can not remember exactly.

Q. Can you approximate it, Mr. Hill?

A. No, I can not truthfully.

Q. I will show you, Mr. Hill, a letter written on the letter-head of ....., dated June 14, 1914, at McAlester, Oklahoma, signed R. B. Hill, and already marked in another deposition, Ryerson Exhibit 6, September 18, 1917, and ask that it be marked in this deposition, 'Hill Exhibit No. 5' of this date, marked for identification. I will ask you, Mr. Hill, if you wrote that letter?

1739 A. I think I did.

Q. That is addressed to your firm in New York?

A. Yes, sir.

Q. I will ask you, again, if that letter refers to shipments of guns and ammunition covered in the orders identified by you in your Exhibits Nos. 1 and 2?

A. To cover all orders shipped in my territory.

Q. To cover all orders shipped in your territory?

A. Yes, sir.

Q. For what period of time?

A. Well, I meant—did I state in that letter?

Q. I am asking you to what that letter referred?

A. This letter seems to refer to orders shipped that week.

Q. I will ask you, again, if that letter refers to shipments on Exhibits 1 and 2? A. Yes, sir.

Q. I will show you a carbon copy of a letter dated June 14, 1914, addressed to Hayden Sporting Goods Company, McAlester, Oklahoma, signed by the Remington Arms Company, by General Sales Manager, marked for identification in another deposition for identification, 'Ryerson Exhibit 7, September 18, 1917', and ask that that be marked for identification: 'Hill Exhibit No. 6' of this date. I will ask you if you remember receiving an original letter of which that purports to be a copy? A. Yes, sir, I remember.

Q. Have you the original of that letter?

A. No, sir.

1740 Q. Do you know where it is?

A. Have not the slightest idea.

Q. I offer in evidence the Hill exhibits Nos. 5 and 6, just identified by the witness.

Q. I will show you what purports to be a carbon copy of a day letter dated June 14, 1914, addressed to H. B. Hill, of McAlester, Oklahoma, signed by Remington Arms & Union Metallic Cartridge Company, C. L. Ryerson, General Sales Manager, and already identified in another deposition: 'For identfication, Ryerson Exhibit No. 11, September 18, 1917,' and ask that that be marked for identification, 'Hill Exhibit No. 7' of this date. I will also show you a 'received' message on a Postal Telegraph blank, dated June 18, 1914, at McAles-

ter, addressed to the Remington Arms & Union Metallic Cartridge Company at New York and signed: 'H. B. Hill', already marked in another deposition for identification 'Ryerson Exhibit 10, September 18, 1917', and ask that it be marked in this deposition for identification 'Hill Exhibit No. 8' of this date. I want to refer first to 'Hill Exhibit No. 8' of this date and ask you if you remember of sending that telegram to your firm in New York? A. Yes, sir.

Q. Referring further to your Exhibit No. 7 of this date I will ask you if you remember receiving a day letter from your firm in New York, of which that purports to be a copy?

A. Yes, sir.

Q. I will ask you to state whether the reference, contained in the said day letter, to a telegraphic order of Model
1741 14 rifle and ammunition refers to either one or both of the orders covered in your exhibits No. 3 and 4 of this date? I will ask you to look at those and say if you can tell?

A. It seems that it refers to order of June 17th.

Q. And what is the exhibit number on that?

A. No. 3.

Q. Do you remember whether Exhibit No. 8, telegram signed by you, of June 18th, was in reply to the day letter of June 18th from your firm? Exhibit No. 7?

A. I think it was.

Cross-Examination.

Q. When you took an order for the goods of your firm the order was credited to some jobber in your district? Was that right? A. Yes, sir.

Q. You did not make out any bills? A. No, sir.

Q. Or orders whereby the debits for the goods ordered was made against an individual or party but was always placed against some jobber, was it not? A. Yes, sir.

Q. John Mastell was a hardware dealer at Hartford, Arkansas? A. Yes, sir.

Q When your order that you have identified as your exhibits No. 1 directs a shipment to John Mastell, the order being placed for Atkinson-Williams Hardware Company, it simply means that the shipment was charged by the Remington Company against the Atkinson-Williams concern but shipments made to Mastell? A. Yes, sir.

1742 Q. Was Mastell the purchaser through the jobber?

A. Yes, sr.

Q. Your attention has been called to a memorandum, apparently at the bottom of this order, following a statement,

signature of purchaser, the statement which you say is in your handwriting 'Federation of Labor. Holt.' Was the Federation [of] the purchaser? Or Mastell?

A. Mastell was the purchaser.

Q. And I believe you state you have no recollection of how that memorandum was made?

A. Can not remember now.

Q. Can you give an explanation of why it is on that order?

A. No, sir.

Q. Is it a fact that the purchase was made by John Mastell? A. Yes, sir.

Q. And the memorandum, 'Federation of Labor', does not signify the purchaser or the consignee?

A. It must be because I made no sales to the Federation of Labor.

Q. Well, how about the word 'Holt'? Did you make a sale in that instance on June 10th? Was that sale made to Holt? Or to Mastell?

A. To Mastell. I never made any sale to Holt.

Q. Rerferring to your Exhibit No. 2, of the same date, the sale being made to the Atkinson-Williams Hardware Company but the shipment to John Mastell, in that shipment as the other, the consignee and purchaser was John Mastell, the hardware merchant at Hartford? A. Yes, sir.

1743 Q. And that order was filled by the jobber? This order telephoned to the jobber?

A. That was furnished through the jobber.

Q. At the bottom of the order is the same statement, signature of purchaser, followed by the notation, 'Federation of Labor. Holt.' Did you sell that bill of goods to the Federation of Labor or Holt? A. No, sir.

Q. Sold to John Mastell through the jobber salesman?

A. Yes, sir.

Q. Coming to the order dated June 17, 1914, Exhibit No. 3, that order was filled through the Atkinson-Williams Hardware Company? Was it not?

A. Yes, sir. If I remember.

Q. Was the order given to you by H. E. Morgan? Or given by you to Morgan?

A. Given to me by Morgan.

Q. Morgan was the representative of the Atkinson-Williams Hardware Company? Was he? A. Yes, sir.

Q. And the shipment, if filled at all, was filled or made by the Atkinson-Williams Hardware Company?

A. Yes, sir. Those orders were given to me, as I remember, by their representative and I paid the telephone and telegraph charges.

1744 Q. To where and to who?

A. To the jobbers and the Remington U. M. C. Company.

Q. You would send this order in to New York?

A. If instructed by the jobber salesman or the jobber.

Q. Well, in that instance were you instructed by the jobber salesman?

A. This order was given to me by Mr. H. E. Morgan, as I remember.

Q. Did you 'phone it in to the Atkinson-Williams Hdw. Co. or telegraph or mail it to the New York concern?

A. I think I wired it to the New York office.

Q. Was the sale made by the Atkinson-Williams Hardware Company?

A. Made by the Atkinson-Williams Hardware Company.

Q. If this shipment, or any of these shipments were made, they would have to be made to the Atkinson-Williams Hardware Company? Is that correct?

A. They, possibly, might have been shipped direct to the retailer and charged to the account of the jobber.

Q. In this Exhibit No. 3 is there anything to indicate to you where the goods were shipped by the Atkinson-Williams Hardware Company, if they were shipped at all?

A. I do not understand.

Q. I am aware there could have been a sale made by the Remington Arms Company—using a short term—to the Atkinson-Williams Hardware Company, the account would always be kept against them and no account against the dealer, as I understand? A. Yes, sir.

Q. But in some instances shipments were made to
1745 the Atkinson-Williams Hardware Company and shipped out by them to the retailer? In other words, there might be a shipment direct from the New York concern to the retailer? A. Yes, sir.

Q. I will ask you if you can refer to order No. 3 of June 17th and see from that how the shipment was made, if a shipment had been made at all would it have been made by the Atkinson-Williams Hardware Company or from the factory by the Remington Company? Is that plain? Is my question now plain, Mr. Hill?

A. Judging from the memorandum of the order it would be impossible for me to state. It would be reasonable for me to judge this order was shipped from Ft. Smith.

Q. You would assume if a shipment had been made on it that the shipment had been made by the Atkinson-Williams Hardware Company to the person named? Is that correct?

A. Yes, sir.

Q. I will refer you to your Exhibit No. 4, dated June 17, 1914. Have you that before you now?

A. Yes, sir, Exhibit No. 4.

Q. Jobber, Atkinson-Williams Hardware Company, ship to John Mastell. If a shipment made in that instance was it a shipment made by the Atkinson-Williams Hardware Company?

A. I can not tell by this memorandum whether these shipments were made from Ft. Smith or the factory. I would like to ask a question. What I want to get at is this; giving my answers to these questions it is impossible for me to state whether they are shipped from Ft. Smith or the factory.

Q. Referring to your Exhibit No. 5, purporting to be
1746 a letter written by you, June 14, 1914, to your firm, I notice this statement: 'Will see that both sides are furnished with Remington products but do not want to be referred to in the deal.' Do you refer to the Bache-Denman interests as one side of this?

A. I cannot state the exact parties to whom I had reference in this letter but as I remember at that time there seemed to be quite a little agitation all over that particular district.

Q. If you refer to the miners as one side, you referred to the operators opposing the laborers on the other side of the controversy, do you not?

A. My idea in writing this, or rather the statements of this letter as I remember it, would cover quite a multitude of sins. There seemed to be quite a little agitation all over that district. As far as the Bache-Denman—I do not remember who was in trouble at that time.

Q. These sales that you say were referred to you when you wrote your letters are sales made to John Mastell living at Hartford, and one John Layton also living at Hartford? That is both Mastell and Layton living at Hartford, Arkansas? That is in the Prairie mining district, is it not?

A. I do not remember one mining district from the other.

Q. Did you sell any rifles to the Bache-Denman interests or their agents? Or to be supplied to them?

A. I do not remember now.

Q. You say that you refer to both sides. Had you been supplying or receiving any orders for arms or Reming-
1747 ton ammunition that was to go to operators?

A. Not that I remember of, I do not remember of selling any operators. I supplied quite a number of the com-

pany stores with perhaps all their guns and ammunition in the coal district, you might say, the McAlester coal district."

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Mr. Drinker: We next offer the testimony of B. G. MOORE, and wish to consider that as read; all of that testimony to the end of it, pages 2062 and 2063.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. Your name is B. G. Moore? A. Yes, sir.

Q. Where do you live? A. Drumright, Oklahoma.

Q. Your business is what?

1748 A. Post office clerk.

Q. Were you employed by the Bache-Denman Coal Company in 1914? A. Yes, sir.

Q. In what capacity? A. Mine clerk.

Q. At what time?

A. In 1914, part of the time at Coronado mine, and part at No. 4.

Q. Were you bill clerk at Mine No. 4 Prairie Creek in July, 1914? A. Yes, sir.

Q. On July 16th of that year? A. Yes, sir.

Q. I hand you plaintiffs' Exhibit 113, and ask you if you have ever seen that bill of lading before? A. Yes, sir.

Q. Will you state what that is?

A. It is a bill of lading covering the shipment of a car of coal, it was made on McAlester Fuel Company's order shipped to—I don't know that I can pronounce it, it is spelled 'Natchitoches Electric Light & Power Company' at Natchitoches, Louisiana.

Q. That is dated July 16th, 1914? A. Yes, sir.

Q. Do you remember when that bill of lading was made out? A. On the date shown.

Q. And you took it to Midland the night of the 16th and had it signed by the railroad agent?

A. Yes, sir, I took it to him that evening.

Q. And in the ordinary course of business that car would have been moved the next day? A. Yes, sir.

Q. I will ask you one further question, Mr. Moore. Do you remember how many cars you billed out from Mine No. 4 on the 16th of July? A. One car."

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1749 EUGENE MCAULIFFE, called as a witness in behalf of plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is Eugene McAuliffe? A. Yes, sir.

Q. And what is your present position?

A. President of the Union Pacific Coal Company, President of the Washington Union Coal Company, and special representative of the Union Pacific Railway System.

Mr. Drinker: I am going to qualify him as an expert.

The Court: Very well.

Q. What was your first position in connection with fuel and the fuel and coal business?

A. I was appointed fuel agent of the Frisco System Railway on the first of March, 1903.

Q. Before that what did you do?

A. I was employed from the time I left school at 20 years of age in 1886, until 1903 in various positions in the mechanical and operating departments of various railroads.

Q. You were a locomotive engineer for a while?

A. I was a locomotive engineer for some years.

Q. How long? A. About nine years.

Q. Now, coming back to 1903, you were fuel agent of what line?

A. The Frisco System, what is known as the St. Louis & San Francisco Railroad with its allied Texas lines.

1750 Q. Any other lines? A. Not until 1908.

Q. What did you take on them?

A. In 1908 the Frisco System was bought by the Reid-Moore interest, and I was appointed general freight agent of the Rock Island-Frisco System, including the Chicago, Rock Island & Pacific and allied lines, the Frisco System and allied

lines, and the Chicago & Eastern Illinois and allied lines, some seventeen corporate lines all told.

Q. How long did you occupy that position?

A. Until the separation of the properties, in 1911, I think.

Q. Then briefly trace yourself down, do not go into detail.

A. After the separation of the properties I resigned from my connection with the Chicago, Rock Island and Pacific, remaining with the St. Louis & San Francisco, the Frisco and allied lines, and the Chicago & Eastern Illinois. Simultaneously I was appointed agent of the Brazil Block Coal Company, a property that belonged to the Chicago & Eastern Illinois, operating some thirteen mines in the states of Indiana and Illinois.

Q. You operated those mines? A. Yes, sir.

Q. Did you ever operate any open shop mines?

A. I had a consulting connection with the Western Kentucky Coal Company for two years, and after the first year, beginning January 1st, 1917, was Vice-President of that company.

Q. And you are familiar with its operation?

A. Yes, sir.

1751 Q. In an operating capacity? A. Yes, sir.

Q. Did you ever occupy any public position in connection with the coal business?

A. During the war I was made manager of the Fuel Conservation Section of the United States Railroad Administration, continuing during the period of the war and until after the armistice was signed and until the railroad properties were returned to their owners.

Q. What was that position?

A. Manager of the Fuel Conservation Section of the United States Railroad Administration.

Q. Now, in connection with your duties as General Fuel Agent of [this] railroad companies you have mentioned, what were your duties and what did you do there?

A. Primarily, as general fuel agent, I had charge of the purchase, distribution and economical use of locomotive fuel including accounting, vouchering, and payment for fuel. I had charge of the development of coal traffic on the Frisco and Chicago & Eastern Illinois, and to a less extent on the Chicago, Rock Island & Pacific lines. That is to say, I had charge of the making of lines to railroad owned mineral lands, construction of tracks to independent properties built by operators, and I exercised a general supervision over the development of the coal traffic.

Q. Did your duties require you and did you actually examine coal lands? A. They did.

1752 Q. What did you do in that connection, generally?

A. Well, when a coal property was advanced as the proper subject for railroad service or track construction, I made an examination of the property and passed on its practicability as an operating proposition, with a view of determining the propriety of the railroad making the necessary expenditure for track and service.

Q. Did you have anything to do with the acquisition of coal lands by the railroad company or its controlled companies?

A. Yes, sir. I had charge of the coal lands owned by the Frisco, and the Chicago & Eastern Illinois, and I acquired, during my connection with that capacity a material acreage in the No thern Kansas Field. I developed for the Frisco lines considerable extent of the Northern Kansas Field.

Q. Did you actually, in connection with your duties, examine and go over coal properties in Arkansas during that period?

A. I think at that time I was quite familiar with every operating coal property in Sebastian County, other than those operated by the Missouri Pacific Railway for fuel and to some extent for commercial purposes. Those I never went into. I think I was substantially familiar with all other property.

Q. You actually went to the mines? A. Yes, sir.

Q. Once or a number of times?

A. Some of them a number of times, others but once.

Q. Have you been to the Bache-Denman mines in the Hartford Valley?

A. Some of the Bache-Denman mines I have been in. There are one or two I think I never went inside of.

1753 Q. Which ones did you never go inside of?

A. I don't think I ever went into the Hoffman mine.

Q. That was leased to the Central Coal & Coke Company?

A. Subsequently, I believe, it was leased to the Central Coal & Coke Company.

Q. You went in the others?

A. I was in Midland No. 6, Coronado repeatedly, Prairie Creek, and Mammoth Vein.

Q. No. 1?

A. I don't know what the number was. We called it the Mammoth Vein.

Q. Were you in the Dallas Mine?

A. I don't recall ever being in the Dallas Mine.

Q. Now, will you please state the physical operating conditions in the several Bache-Denman mines, taking them up in

the order which I will name in a moment, as affecting the cost and avaiability for economic operation from a physical point of view, irrespective of labor conditions. Beginning with Prairie Creek No. 4, describe the operating conditions of that mine.

Mr. Warrum: No time is fixed, if the Court please, and the defendants object to the examination.

Mr. Drinker: 1913 and 1914.

Mr. Warrum: The time is not fixed when he made the examination of these properties.

Q. Did your familiarity with these properties cover the years 1913 and 1914, as you have described?

A. It covers a period from about 1903 to 1917.

1754 Q. Continuously? A. Yes, sir.

Q. Will you describe these physical conditions as they existed at the end of 1913 and beginning of 1914?

A. What mine.

Q. Prairie Creek No. 4?

A. The Prairie Creek Mine had—

Q. The vein of coal first, what vein was there?

A. In the big seam, what was known as the Huntington and Hartford vein.

Q. How thick was that?

A. My recollection of the mine is that it ran from perhaps five feet six to eight feet thick.

Q. How does that compare with the vein of coal as mined in other Arkansas mines?

A. Perhaps somewhat above the average.

Q. What other mines are as high as that?

A. The Mammoth Vein was somewhat higher, averaged somewhat higher.

Q. Mammoth Vein, Bache-Denman you mean?

A. Yes, sir, Mammoth Vein, Bache-Denman.

Q. What other mines, other than Bache-Denman mines, had as big a vein as that?

A. The Central Coal & Coke No. 3, and No. 5 which had a relatively short life and No. 2.

Q. That is, Central Coal & Coke Company No. 2?

A. Yes, sir, and Central No. 6.

Q. Any other mines with as big vein as that in Arkansas?

1755 A. No, sir, I cannot say that I have knowledge of other mines with as thick a vein as that.

Q. How about the condition of the water in the mine? By "water" I mean the condition as to whether water would accumulate and have to be pumped out?

A. Water accumulates in all deep mines in Sebastian County.

Q. How do the Bache-Denman mines compare with the other mines as to that?

A. They all average. I don't think I have seen any flooded conditions or any abnormal water conditions obtaining in any of these Sebastian County mines, except those subject to flood.

Q. How about gas?

A. Gas was never looked upon as a very serious problem in Sebastian County.

Q. How about the roof?

A. Roofing conditions were favorable. At least I never understood they were unfavorable.

Q. I am comparing these with other Arkansas mines of other operators? A. Quite as favorable.

Q. How about the railroad connections of these Bache Mines?

A. Prairie Creek was served by the Midland Valley, and I think the Rock Island, I am not quite sure of that. I can't recall that. It was quite close to Hartford.

Q. What about the quality of the coal from that mine?

A. The quality of the coal was equal to that of the Hartford mines of the Central Coal & Coke and other Bache-
1756 Denman and Central Coal & Coke mines, with the exception that the Bache-Denman Company Midland No. 6 mine, which was a thin seam, produced superior coal.

Q. You say other than No. 6 the mines were equal to other outside mines?

A. I think perhaps it was superior. I think it had the reputation of producing coal superior to some of the other thick seam mines.

Q. Taking the thick seam mines in general, is their coal superior or inferior to thin seam mines?

A. The thin seam mines usually work one of the benches of the thick seam and produce a somewhat superior grade of coal. Midland No. 6 for example, was perhaps better than any other mine in the district that I have knowledge of, from the standpoint of quality.

Q. In general, was the coal from Prairie Creek No. 4 equal, superior or inferior to other coal of the other Arkansas operators?

A. Somewhat above the average of the Sebastian County coal.

Q. Now, we will take Mammoth Vein No. 1. That was the big Mammoth Vein mine. What vein did it operate?

A. It operated the big Sebastian County seam.

Q. How thick was the coal there?

A. I think, if my recollection serves me right that ran 7½ perhaps 8 feet. It was the thickest seam of coal that I can recall going into in Sebastian County?

Q. How about other parts of Arkansas?

A. Generally speaking, the remaining mines in the
1757 state of Arkansas was somewhat thinner.

Q. Is there any [of] mine that you know of in Arkansas with a thicker vein of coal than Mammoth Vein No. 1 at that time?

A. I cannot recall seeing a thicker seam operated than that.

Q. Were you familiar with all the mines in Arkansas?

A. No, sir. I was not familiar with the eastern part of the field, the hard coal field and never gave much attention to the Jenny Lind district.

Q. Your testimony covers all the mines except those?

A. Yes, sir.

Q. As to the other conditions which I have mentioned, in connection with Prarie Creek No. 4, were the conditions at Mammoth Vein different?

A. No, sir. I think the conditions at Mammoth Vein were generally favorable to operation.

Q. We have fixed No. 4 as compared with the various mines in the state of Arkansas. Now we are fixing the others as compared with No. 4.

A. I think Mammoth Vein was capable of producing coal for somewhat less money per ton than No. 4

Q. Now take Mammoth Vein No. 6, Midland 6 or "Little Six", what vein did it operate?

A. They operate one of the benches of the thick seam, the thick or principal vein over the rock parting vein for a few inches, as shown in the Coronado and Central No. 3 mine, adjacent to the Coronado mine, with a thickness in perhaps some instances of 30 feet, making it only possible to work one bench
of the seam.

1758 Q. How were operating conditions there, physical operating conditions, as compared with Prairie Creek, except for the thick vein condition?

A. The physical conditions were good except for the thickness of the seam. As I recall No. 6, it had a sandstone roof and was dry. The seam lay comparatively level, and the mining conditions were very good, with that qualification that the seam was a thin seam.

Q. Perhaps, for the benefit of the Jury, who are not mining experts, it would be well for you to explain briefly how the coal seams lie in a mine and how they are gotten out. I don't believe they have heard that yet. Will you describe in a brief way, in a minute or two, how coal seams lie in the ground and what you do to get them out?

A. Coal is primarily laid down in substantially a horizontal position.

Q. That is flat? A. Yes, sir.

Q. Like the leaves of a book on the table?

A. Yes, sir; or to make a homely comparison, perhaps, somewhat like the layers of jelly in a cake. There may be one seam, or a number of seams in conjunction, one above another, or below each other, as the case may be. Primarily coal is laid down in a horizontal position. After it is laid down, deposits of slate, shale, sand stone, lime stone, and other matter covers it.

Q. What was the coal in the very beginning millions of years ago?

The Court: Better ask him if he knows.

1759 Q. Do you know where the coal came from?

A. I can only give you the opinion of authorities.

Q. What is it geologically?

A. It is of woody origin, the product of forests laid down and covered by sedimentary deposits.

By the Court:

Q. Was it the product of forests or the product of swamps, or can you tell?

A. Well, geologists, your Honor—

Q. In other words, there is considerable dispute about it?

A. I think peat is generally recognized as the product of swampy matter, and that it takes forestation or more substantially woody structure to make coal, either bituminous, lignite or anthracite.

By Mr. Drinker:

Q. Coal grew once, anyhow?

A. Yes, sir.

Q. Whether it was grass or trees or what it was, it grew and died and was deposited in layers such as you have indicated?

A. Yes, sir, and covered by water and other matter and was deposited in a substantially horizontal position, afterwards covered by earthy deposits.

Q. And that was squeezed together and became coal after millions of years? A. Yes, sir.

The Court: Better not commit him to millions of years. Maybe it was, and maybe it was not.

Mr. Drinker: It was just to get the picture.

Q. You were not there at the time, anyhow?
A. Not in my present form.

1760 The Court: Proceed.

Q. Now, describe briefly the way they mine coal, how they get it out, how far into the ground these layers are in Sebastian County?

A. Well, in some instances they are substantially exposed from the surface.

Q. They bend up?

A. Yes, sir, second earth movements tilting seams, bringing them to the surface. At least the tilting of the earth structure with frequent erosions, will frequently expose seams of coal.

Q. You mean a volcano might blow one end of the cake up and the other end up and it would bend in the middle and the jelly would come out at the top?

A. I wouldn't want to call it a volcano, but the action of the earth will sometimes bring coal to the surface, where subsequent erosions take the rock away.

Q. The water washes the dirt away and then the jelly comes out on the surface?

A. It may appear in a relatively perpendicular position, or may be tilted; in some cases it comes out almost perpendicular, but not in this particular territory.

Q. How do they get the coal out, in general?

A. Coal in Sebastian county and the Arkansas field is either brought out through the medium of slopes or shafts.

Q. Slopes or shafts? A. Yes, sir.

Q. Tell the jury what a slope is?

1761 A. A slope is an opening starting substantially at the point where the coal seam is exposed and following the coal seam down.

Q. Just as if you drove a hole through the jelly in the cake?

A. Yes, sir, with the lateral entries extending to the right or left, as the case may be.

Q. You tilt the cake and cut it off, the jelly comes out at the top and then you drive a tool down to the jelly and that brings out the jelly or the coal, brings it back to the top?

A. That is quite correct. In other instances where the coal is covered and not sufficiently exposed, it is done by sinking a shaft.

Q. If the cake stays flat, you dig a [whole] through the cake part until you get to the jelly?

A. Yes, sir. In many instances it is necessary to drive a shaft when it is not flat. If the conditions attendant upon the exposed area of the coal are properly developed, it can be done by a shaft, although it may be tilted.

Q. Now, coming back again to Mammoth Vein, I think you have described Mammoth Vein No. 1, No. 6 and Prairie Creek. Now, go to Coronado. What were the physical conditions there?

A. The physical conditions at Coronado, up to the time the mine was abandoned, were rather superior. The coal was thick. It carried a rock parting similar to that in the mines of the Central Coal & Coke Company. I think that parting in that particular district reaches a maximum of 12 or thirteen inches in thickness, and in some instances as thin as six or seven inches.

Q. There was a layer of something inside the jelly?

1762 A. A layer of earthy matter between the two principal benches of coal that constitute the main seam.

Q. You could split the jelly by putting a piece of paper in it?

A. That would represent it. That is a good example.

Q. How thick was the vein at Coronado?

A. Coronado in some places reached a thickness of eight or nine feet, above a man's head.

Q. All coal?

A. Coal, and including this parting, which was mined and thrown back by the miners.

Q. The miners would take that out and then throw it back?

A. Yes, sir. They usually mine the upper bench, and throw the parting back into the gob.

Q. What is the importance in the operation of a mine in having a very thick vein?

A. It represents normally a more economical production.

Q. Why is that? What do you have to do when you have a three foot vein that you do not have to do with eight foot or six foot vein?

A. The development cost of a three foot vein of coal will be substantially different from that of a six foot vein. In other words, there are certain arbitrary charges incidental to driving development work, yardage, room turning, taking up bottoms, and all of that which has no relation to the height, but which decreases the per ton of output as the height of the seam increases.

Q. You have to dig as much before you have it mined in a three foot vein, but you only get half as much coal when you get through?

1763 A. Very frequently you have to take a very material amount of rock in order to make clearance for mules and men to make mining practical, which you are not required to take out of a thick seam.

Q. You haven't got enough room in there for the cars to go along and for the mules to run on?

A. That is true. Mule haulage was almost universal in Arkansas at that time, and it was necessary to get it sufficiently high to enable a small mule to travel.

Q. In the operating conditions other than the height of the vein, how did Coronado compare with Prairie Creek, water, gas, track connections, roof and top?

A. As I stated, I never looked upon the water and gas conditions in Sebastian County as being in any way abnormal. The conditions at Coronado were very favorable.

Q. Compared with Prairie Creek No. 4, do you mean they were as good as that?

A. Somewhat better than Prairie Creek No. 4.

Q. Now, take the Dallas mine, you said you had not been in that mine, I believe?

A. I do not recall being in that mine.

Q. Were you in the Hoffman mine?

A. I don't recall being in the Hoffman mine.

Q. Do you know as to the question of operating a mine with one man in a room, or two men in a room, at these mines, do you know how they were operated in connection with that feature?

A. My recollection of the conditions in Sebastian

1764 County is that some of the mines allowed two men in a working space, and in other mines it was required that individual men be given space, or two men two spaces.

Q. That was a matter of union contract?

A. It was a matter of contract.

Q. In the union contract it is provided they could work one man in a room, or two men in a room?

A. Yes, sir.

Q. And your recollection of the Bache-Denman mines—

Mr. Warrum: If the court please, we are not objecting to the general statement, but he is being asked in reference to a particular contract, and to that the defendants separately object.

Mr. Drinker: We are going to prove it without a doubt.

Mr. Warrum: Then prove it by the contract.

The Court: Will the contract be in evidence?

Mr. Drinker: Yes, but that does not prove it. It would take two hundred pages. I will get at it at another point.

Q. Never mind about the Bache-Denman mines, will you describe to the jury what is the importance, from the point of view of economical operation, and quantity of production, as to whether you are allowed to work one man in a room or two men in a room. Please begin by describing what the rooms are and how the men work in them, so that can be understood.

Mr. Warrum: The defendants separately object to that as immaterial, and as not throwing any light upon the contention of the plaintiffs regarding the issues in this case.

The Court: The condition of the mines might possibly
1765 be material. Let us make it short.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. A room is the place where the individual miners or pair of miners work, and where the major amount of coal is extracted. Entries are primarily for the purpose of getting to the rooms, to accommodate haulage, and furnish ventilation for the rooms. The major amount of coal always comes out of a room, in the room and pillar system, such as used in Sebastian County. The effect of spreading men out on the expense or cost of production, is very material, due to the fact that you have to take care of the ventilation, drainage, roof, bottoms, and those things, of a much greater territory. In substance, the more you can concentrate your production in a limited area the cheaper the cost of production. The more you have to compress your territory to get a given production the higher the union cost of production will be. In substance, economical mining is best affected by concentrating the work in the smallest possible area. Practically all the coal that can be extracted from that area will then go out and go into that territory.

Q. You can get greater production by planting apple trees fifty feet apart than by planting them one hundred feet apart?

A. You get cheaper production by concentration of men and haulage and ventilation and general mining maintenance than you can by spreading a given number of men and a given tonnage over a large area.

Q. You have testified that you have operated mines
1766 under union conditions and under non-union conditions.
In case of a mine producing in 1914 from 800 to 1,000 tons a day, operating under a union scale, allowing one man to work in a room, with the other conditions then in effect under the union scale in Arkansas in 1914, and with an actual operating cost of $1.75 per ton, how much in your opinion would that cost have been reduced if the mine had been permitted to run under open shop conditions, with no conditions under the union contract in effect?

Mr. Warrum: If the court please, the defendants separately object to that question, as calling for a speculation on the part of the witness, assuming facts as a basis of his speculative opinion, which are not in the record, and it is a question which obviously must contain other facts and factors which have not been recited by counsel and cannot be recited, and is a fact that is irrelevant in this case, and the answer of the witness to the question would not tend to support the position of the plaintiffs on any issue in this case.

By the Court:

Q. Are you sure you can answer that question? You were not an operator in the field at the time?

A. No, sir.

Q. You don't know what you could have employed non-union labor for at the time?

A. I can only answer from my general experience.

Q. I don't want you to answer unless you know. Do you know enough about the situation in this field at that particular time to answer that question?

A. I think I had a very good knowledge of conditions
1767 in this field. I had an acquaintance with the coal veins, and our operators were making large purchases from them, and I was frequently in this territory. I had a general knowledge of that situation. I have a very definite opinion.

Q. The coal you were buying was mined by union labor?

A. Yes, sir, in this field.

Q. Do you know anything about what non-union men have charged for their labor at that time?

A. I could only draw a comparison with the prices paid for labor in western Kentucky and Alabama, where we were purchasing and had an interest in non-union production.

By Mr. Drinker:

Q. May I ask, if you can say so without offending your sense of modesty, do you think there is any man in the southwest who is better able to answer that question than you are?

Mr. Warrum: That is the best illustration of the testimony that has been sought by this witness. No doubt he would pass an eonium upon himself.

The Court: I can't see where it is material in this case, but I will allow him to answer it.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

By Mr. Drinker:

Q. Do you understand the question?

A. I don't believe I do.

Mr. Drinker: If the court please, we will ask to have the question read.

The Court: Read the question.

1768 (The question was thereupon read by the reporter as follows:

"Q. You have testified that you have operated under union conditions and under non-union conditions. In case of a mine producing in 1914 from 800 to 1,000 tons a day, operating under a union scale, allowing one man to work in a room, and with the other conditions then in effect under the union scale in Arkansas in 1914, with an actual operating cost of $1.75 per ton, how much in your opinion would that cost have been reduced if the mine would have been permitted to run under open shop conditions where no conditions under the union contract were in effect?")

The Witness: Is that the question I am to answer?

Mr. Drinker: Yes, sir.

The Witness: As a matter of privilege, I will have to decline to answer the question in regarding to my qualifications.

Q. No, that question was withdrawn. The question you were to answer was the one just read by the reporter.

A. The difference in the cost of production under the conditions then obtaining in the Sebastian County field, taking out the union contract conditions on the one hand, and a reasonable open shop situation on the other, would in my opinion result in a difference of from 25 to 40 cents per ton in favor of the open shop condition.

Q. Now, in connection with that, what are the principal factors which make the cost of operation under the union contract higher than under open shop conditions?

1769 Mr. Warrum: The defendants separately object to the question, if the court please, because it is immaterial, and does not tend to throw any light on the issues in this case.

The Court: I cannot see what light it throws on this case.

Mr. Drinker: Does your Honor ask me to explain it? I don't want to explain it. I don't want to unless your Honor wishes it, but it is very important in our opinion, both as to the possibility of increased capacity and as to the whole thing, what could have been done in these mines.

The Court: It has been conceded all through this case, and I apprehend it will be conceded, that a mine working non-union men under no contract can produce coal much cheaper than under a union wage scale.

Mr. Drinker: Your Honor, for instance, you have just referred to the matter of wages. I want to show by this witness that the matter of wages is a comparatively small question in the cost of production.

The Court: I didn't say "wages"; I said "under union wage scale".

Mr. Drinker: I want to show by the present witness that a reduction in wages would not reduce the cost a great deal.

The Court: How does that affect the situation.

Mr. Drinker: To show the potentiality of the Bache mines. As I read the Supreme Court opinion, we must conclusively establish that fact.

The Court: I would suppose the reason you qualified this witness was to see what these mines, as they were
1770 equipped at that time, were capable of producing.

Mr. Drinker: This is preliminary to that. I am not sure that will ask that particular question, but I will ask several other witnesses that.

Mr. Warrum: I have not addressed the court very often in the trial of this case, except to make a formal objection, but I would like to read this to your Honor from the Supreme Court's opinion:

"The saving in the price per ton of coal under non-union conditions was said by plaintiff's witnesses to be from 17 to 20 cents, surely no one would say that such a saving on 5,000 tons would have a substantial effect on prices of coal in interstate commerce. Nor could it be inferred that Bache intended

to cut the price of coal. His purpose was probably to pocket the profit that such a reduction made possible.''

Mr. Drinker: I don't think that is a fair way to try this case. I know what the purpose of that is perfectly well. I refuse to do anything like that.

The Court: Just a moment. Let us try this case. This man should know as well as any man about the possibility of production in this mine. Now, why not ask him that?

Mr. Drinker: I am asking him about that. Your honor can see how much I want to show how much it actually would save.

The Court: If he knows the ultimate facts, why not ask him?

Mr. Drinker: I don't want to leave this record in such a shape that the Supreme Court can say this important testimony has been omitted.

1771 The Court: I should think you could shorten this by getting down to what you want to prove about the possibility of these mines.

Mr. Drinker: That is what I want to do. I will ask him another question.

Q. Just the high spots, whether the elimination of the two or three conditions under a union contract would reduce the cost, whether wages are of primary consideration, the amount of wages paid the men?

A. I never looked upon the wages paid to mine workers as of supreme importance. Continuity of operation, ability to operate continuously, is above and beyond wages.

Mr. Warrum: The defendants separately object to any further answer by this witness to this question for the reason that it is a pure speculation, his own opinion of the relative merits of union and non-union operation, going into the field of conjecture, opening wide the door for a vast amount of testimony upon our side upon this proposition, tending to throw no light upon the plaintiff's contention with reference to the issues in this case.

The Court: I am going to allow him to answer, but I want to bring this matter down some place. Proceed.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. You were just mentioning about wages?

A. I don't regard the rate of wages paid men working in a [man] as the greatest factor affecting the cost of pro-
1772 duction. I think that discipline and continuity of operation are worth more to the operator of coal in dollars and cents cost per ton of his production than any reduction he can affect in the day wage.

Q. Now, we will go onto something else. I wish you would describe briefly the competitive conditions affecting the production of coal from the mines in Sebastian county, in affect at the end of 1913 and beginning of 1914, what coal was sold on the market where the Arkansas operators were at that time in competition. Go right around the circle.

Mr. Warrum: We again renew our objection to his line of testimony, for the reason that the Supreme Court has laid down certain rules governing this condition, and this is an attempt to secure an opinion from the witness which will [overruled and set aside the opinion of the Supreme Court on this very point. If I read the opinion, he will quarrel with me.

The Court: I have read it.

Mr. Warrum: The opinion states the test. It is the production of the mines. In the United Mine Workers case decided in the Circuit Court of Appeals for this Circuit, they took up the complaint in the Coronado case, and gave their construction of the complaint and definitely stated that the complaint in the Coronado case, under the opinion of the Supreme Court, must be a comparison of production in the nation. This is an attempt to shift the question of competition to Alabama and Kentucky and various places, and we object to it.

The Court: They are entitled to try the case on their own theory, and I will let them do that. Proceed.

1773 To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Q. Do you remember the question?
A. No, sir.
Q. I asked you to go around the circle and describe competitive conditions affecting the Arkansas coal?

The Court: Do you mean coal from what field came in competition with this?

Mr. Drinker: Yes.

The Court: All right, I did not understand your question.

A. The Arkansas coal came in direct competition with coal from Oklahoma, New Mexico, Colorado, to a limited extent with Wyoming and Montana, Kansas, Illinois, Indiana, and in Minnesota, Dakota and Wisconsin territories, the coal of Eastern Kentucky, West Virginia, Western Pennsylvania and Ohio. The screenings produced in Sebastian County, that portion not taken by the railroads, would go to some extent to the markets in this state. I think perhaps Little Rock was the best screening market that Sebastian County had. The lump coal went to Texas, Eastern Kansas, Nebraska and to the Twin Cities.

Q. Minneapolis and St. Paul?

A. Minneapolis and St. Paul, Chicago and St. Louis.

Q. What coal did this screening meet at Little Rock?

A. It met the Oklahoma and Western Kentucky screenings.

Q. By "screenings" do you mean the fine stuff that falls through the screen and leaves the lumps on the top?

A. Yes, sir, the fine matter taken out of the mine run.

1774 Q. [Mien] run is where it is all bunched together, and lumps are the big hunks and the screenings are the dust that falls through? A. Dust and small particles.

Q. What in your experience are the factors and elements which enter into the determination by a coal operator of the price to be charged by him for his coal?

Mr. Warrum: Now, if the Court please, that is the most speculative question I ever heard. It depends upon a good many things.

The Court: It depends upon what he can get.

Mr. Warrum: Yes.

Mr. Drinker: If your Honor please, you can readily see where I am coming to here.

The Court: No, I cannot.

Mr. Drinker: I was sure we could assume this from a common sense point of view until I read a certain document. I would like to get some testimony in connection with it.

The Court: The question is not competent. If he knows anything about it, why not ask him direct.

Mr. Drinker: I don't understand your Honor by "direct".

The Court: I would make my questions more pointed. I would get right at what I wanted to prove.

Mr. Drinker: I want to prove—

The Court: Very well. Proceed. You have qualified this witness as an expert. Now, ask him a direct question.

Mr. Drinker: Your Honor, that is exactly what I want to prove, what I have asked, how the price of coal is fixed.

1775 The Court: Let him answer.

Mr. Warrum: We renew our objection.

The Court: Proceed.

To which ruling and action of the court the defendant and each of them at the time duly excepted and still except.

Q. Do you understand my question?
A. How it is fixed?
Q. How is the price which the coal operator charges for his coal fixed? Is it fixed on what it cost him to mine it, or what he can get for it?
A. What he can get for it at the point of consumption wherever that might be.
Q. What factors influence the operator in arriving at what he is going to charge for his coal?

Mr. Warrum: The defendants again object to that class of testimony, because it is calling for a speculation.

The Court: Again, what he can get for it. If he can get more for his coal than he sells it at, he asks more.

The Witness: There are two sources, your Honor.

Mr. Warrum: I object to the answer of the witness, even if your Honor did ask the question.

The Court: Proceed.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. There are two factors that enter into the sale of coal,—the cost f. o. b. mine and freight rate. The major portion of the coal produced is consumed at points remote from
1776 the mines. The operators have no general control over freight rates. It is the freight rate added to the cost that determines his ability to market.

The Court: That is not the question that has been asked at all. The question is, what does he sell his coal for? He sells for what he can get on the market.

A. Usually the best price he can get.

Q. (By Mr. Drinker) How low will the operator reduce his price?

Mr. Warrum: If the court please, this witness may be qualified as an expert on certain matters, but certainly he has not qualified as a psychological expert. I object to the witness answering that question, on the ground that it is purely speculative.

The Court: I am afraid it is.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Does the operator reduce his price so as to get business on a market where the highest price he can get for it is below the cost of production?

Mr. Warrum: The defendants renew their objection. It is the same matter. We make the same objection; calling for a speculation.

The Court: I think it depends somewhat on the operator. If he can answer that question, he may answer it.

Q. Can you answer the question? A. Yes, sir.
Q. Pease do so?
1777 A. At times.
Q. What times?
A. I think a good many are doing it at the present time.
Q. If he can sell coal at a place where he can make a profit, will he sell it where he cannot?
A. Not if he is a good business man.

Mr. Warrum: We object to that.

The Court: Something are to obvious for a court and jury to spend time taking testimony on. Any juror or court knows that if he can sell where he can make money he will do it in preference to selling where he will lose money. It seems to me that is an insult to the intelligence of the court and jury.

Mr. Drinker: I don't mean to insult the intelligence of anyone.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Will you describe, Mr. McAuliffe, how, if at all, the circle of available markets for these Bache-Denman mines you

described in 1914 could have been increased, if the cost of operation of the Bache-Denman mines had been reduced by from 25 to 40 cents per ton?

Mr. Warrum: The defendants separately object to that question, for all the reasons heretofore given.

The Court: Let him answer.

To which action and ruling of the court the defendants and each of them at the time duly except.

Q. Go around the circle again. First say in general
1778 what is your opinion, and then go around the circle again.

A. A mine that can exist at all can always sell a certain amount of coal. It must sell to exist. The ability to spread out, to travel a distance from the point of production, is dependent upon two factors, the cost of production and the freight rate. If the cost of production is low, necessarily, an operator adding the low cost to his fixed freight rate can go further than he could under the higher scale. If his cost is increased by any means, natural or artificial his frontier line must necessarily be protected when he is in competition with other coals. If under a given cost and given freight rate [and] operator can move coal within a territory extending in one or more extensions 200 miles from his mine and his cost is reduced, he can expand that territory; he can go a still further distance; he can increase his market territory. If his cost is increased he will necessarily have to contract, be satisfied with less territory. There is a continual overlapping and change in the frontier line of cost distribution, fluctuation in costs, difference in freight rates, affecting the market territory that any company or any district can put its coals into.

Q. Just as an illustration, state briefly what market the Bache-Denman mine could have reached in 1914 with a 25 to 40 cents reduction, which they could not reach without that reduction?

Mr. Warrum: The defendants separately object to that question, for the reasons heretofore stated. It is an [obvkous] attempt to secure from this witness a revision of
the ruling and decision of the Supreme Court upon this
1779 particular point. There is no evidence that Mr. Bache sold any non-union coal any cheaper on the market than they did union coal. There is no label for non-union coal or union coal. It is all one on the market. This is an obvious attempt to set aside the opinion of the Supreme Court by the

opinion of this witness as to what Mr. Bache could or could not do.

The Court: He may answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Mr. Warrum: I would like to add to the objection that a 25 to 40 cent reduction is not indicated by the answer to be a reduction in the selling price of the coal.

The Court: He may answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. First I want to say that I made no reference to 20 or 40 per cent.

Q. No, 25 to 40 cents per ton?

A. I can distinctly recall making reductions in freight rates at the instigation of Mr. Bache to St. Louis and the Twin Cities, St. Paul and Minneapolis, and points on the Chicago Greatwestern.

Mr. Warrum: The defendants object and move that the answer be stricken out as not responsive to the question.

The Court: Let it stand, proceed.

To which ruling and action of the court the defendants and each of the time at the time duly excepted and still except.

A. (Continuing) Well, I think a reduction of 25 to
1780 40 cents per ton in the delivered cost would have affected the sale of a material tonnage of coal.

Q. What markets in the west could have been reached with a reduction in the price of coal of that amount that could not have been reached without it?

Mr. Warrum: The objection is renewed, if the court please, for the same reasons heretofore given.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. I think the market in Eastern Kansas, Nebraska, Eastern Iowa, South Dakota, Minnesota and Wisconsin, could have been increased with a reduction in the price of coal mined in Arkansas.

Mr. Drinker: If the court please, on the matter of objections being made and the ground being stated that I am trying to overturn the Supreme Court, I would like to state my position on that.

The Court: I don't think it is necessary to take the time for that. The court understands the situation.

Mr. Drinker: It does not seem to be fair, the constant imputation on me of trying to overrule the Supreme Court. I know your Honor understands it, but I don't believe the jury does.

The Court: Try your case in your own way, proceed.

Mr. Drinker: You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. Is there some non-union coal produced down here
1781 in Arkansas and Texas and Oklahoma? A. Now?

Q. Was there in 1912 and [193] and 1914?

A. No, I don't recall any material tonnage of non-union coal produced in Arkansas, Texas or Oklahoma at that time. There was some.

Q. Some? A. Yes, sir.

Q. Was it sold on the market at the same price as union coal? A. That I couldn't say.

Q. There is no label on union coal? A. No, sir.

Q. It was all coal? A. All coal.

Mr. Drinker: I object to this line of examination, for the reason that it is an obvious attempt to confuse the jury.

The Court: It is cross-examination. Proceed.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Non-union coal is sold for exactly the same price that union coal is sold for? A. No, I don't know that.

Q. You don't? A. No, sir.

Q. Was there a different market for non-union coal in Arkansas and Oklahoma than there was for union coal?

A. No. I presume it was all sold on a common market.
1782 Q. Sold on the common market at a common market price?

A. No, I never saw coal sold by different companies at exactly the same price for any material length of time.

Q. Do you know who sold the coal of the Bache-Denman Company, who had the contract to sell it?

A. The McAlester Fuel Company sold a good deal of it. I bought some coal direct from the Bache-Denman Company. That is as far as I know as to what their sales arrangements were.

Q. Did you get it any cheaper than you got union coal?

A. I didn't buy any non-union coal from the Bache-Denman Company. They didn't produce any to my knowledge.

Q. You don't know whether he was going to sell his non-union coal cheaper or not?

A. I don't know what his intention was.

Q. It is your opinion that he could produce it cheaper?

A. I think he could.

Q. One of the ways he could produce it cheaper is by having two men in a room, which he could not do working under union contracts?

A. That is one item, not one of the compelling ones.

Q He could produce it still cheaper with three men in a room? A. I doubt that.

Q. In other words, if the operator is left free to say how many miners shall work in a room together, he can naturally produce his coal cheaper than if the miners have something to say about the conditions under which they labor. Is that right?

A. I think the control of the mine property and the discipline of the men is a matter that enters into the cost very materially.

1783 Q. Yes, and if you can employ non-union men and discharge them as you see fit, so that they will not, as one witness testified, have permanent homes adjoining the mines; fix the wages by individual contracts; determine the number of men that shall work in a room and the conditions under which they shall work, and the individual miners have no control as far as wages, conditions and working conditions are concerned, you could produce coal cheaper than you could under union conditions? A. No.

Q. You could not? A. No.

Q. You could not. All right.

A. I don't think that the continual shifting of men, discharging men today and hiring them tomorrow is conducive to economical production of coal.

1784 Q. Now, you were in those mines in 1913,—1912, '13 and '14? A. From 1903 to 1917, at various times.

Q. Were you in the mines in 1912?

A. I have no doubt but what I was in some of these mines in 1912.

Q. Why do you say you have no doubt about it? Did you make an annual or periodical visit to them?

A. No, sir, I spent perhaps 50 per cent of my time in the mines,—

Q. You were in Kansas, were you?

A. Kansas, Arkansas, and to a limited extent in Oklahoma and Alabama.

Q. Kansas, Arkansas, Oklahoma and Alabama, were you in Missouri at all?

A. We had no mine development on our lines in Missouri of any consequence.

Q. Were these Bache-Denman mines on your line?

A. Part of them were and part were not.

Q. What ones were on your line?

A. Coronado was on our line.

Q. Was Prairie Creek No. 4? A. No, sir.

Q. Then you did visit mines that were not on your line?

A. I did in the Arkansas field.

Q. Only in the Arkansas field?

A. And in Alabama and in Kansas.

Q. Also in Alabama and Kansas? A. Yes, sir.

Q. Did you do it in Missouri?

1785 A. No, because there were no mines of consequence, or in proximity or directly competitive on our lines in Missouri, except those that were an extension of the southeast Kansas coal field, that goes into Barton County, Missouri, I look upon that as the Kansas field.

Q. And for that reason you made periodical visits to this Prairie Creek and Hartford Valley?

A. I didn't make periodical visits to Prairie Creek or to Hartford; I had charge of the development of the coal traffic, and undertook to maintain and keep an acquaintance with the mines on neighboring roads that were competitive with ours.

Q. I appreciate that and understand it. Now, can you state whether or not you were in these mines at all in 1912?

A. I am satisfied I was in No. 6, and in Mammoth Vein in 1912.

Q. Mammoth Vein No. 1?

A. I don't recall the number, I knew it was a Mammoth Vein mine.

Q. You testified it was Mammoth Vein 1, did you not?

A. No, I don't recall that I have.

Q. Were you there in 1913?

A. I would not want to say specifically that I was in either one of these mines off the Frisco rails in 1913.

Q. Were you there in 1914?
A. If I was not in 1913, I was in all probability in 1914.
Q What time in 1914 were you there? A. I can't say.
Q. You can approximate it—you can think back and testify as to conditions down there, can't you recall that?
1786 A. I would not attempt to say whether I was there in January or December or July. I made visits to this field on foot, horseback, and in a wagon, perhaps not less frequently than every month or six weeks.
Q. Did you make notes? A. I did.
Q. And you refreshed your memory from those notes?
A. No, sir, they are not in my possession, they are in the possession of the Frisco railroad.
Q. When did you last see those notes? A. Six years.
Q. You read over some testimony in the former case that enabled you to testify as to the mining conditions there?
A. No, sir, I have read no testimony at all in this case.
Q. But you recall, without having read anything, and without your notes, for six years, you recall the specific conditions that you testified to, although it carries your memory back for six years?
A. Yes, sir, I have a very vivid impression of those mines, as well as the mines in perhaps a half dozen other states.
Q. But you have no memory of when you were there?
A. No, sir, I can't say when I visited those mines, and would not attempt to.

Redirect Examination

By Mr. Drinker:
Q. Mr. Warrum has asked you about the effect of hiring and discharging men on the operating conditions, and
1787 the effect of the control of the mine, and whether the mine can be operated cheaper if the manager runs it than the union runs it. I don't think your answer quite explained your position about the fact of hiring and discharging men, and the labor turn-over. Will you explain that a little more clearly?

Mr. Warrum: We object to this. My examination was cross-examination, and did not bring out about the union discharging men.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. As I understood the attorneys' question he referred to the effect of the operator exercising the privilege of hiring and discharging men at frequent intervals; hiring him today and discharging him tomorrow. I say it would be quite impossible to operate a mine successfully under that management. There must be some permanency of employment in order that men may get acquainted with the work, and in order that the work might attract competent men. I can not conceive how any operator would wish to employ men today and discharge them tomorrow.

Mr. Warrum: I object to this as intellectual speculation—

The Court: I think he has answered the question, anyway.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

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1788 T. A. FREEZE, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your full name? A. T. A. Freeze.

Q. How did you start in the coal business?

A. Digging coal.

Q. Where? A. Huntington, Arkansas.

Q. How long were you a coal digger?

A. About from 1893 to 1902, as I recall it.

Q. And then what was your first step up?

A. I went to mine foreman for Finney & Turner, in what is known as the Red Rock Mine.

Q. You were mine boss there? A. Yes, sir.

Q. That was in 1901 or 1902?

A. 1901 or 1902, I am not positive which; the fall of 1901.

Q. What was your next step up?

A. Then I bought Mr. Turner's interest in that mine, and Mr. Finney and I operated it until—for about 6 years.

Q. You were operating with Mr. Finney, in joint ownership of this mine? A. Yes, sir.

Q. Where is that?

A. Called the Dallas Coal Company, at Red Rock.

1789 Q. That is not the Dallas Coal Company down here?

A. No, sir, it is just across the creek from Midland.

Q. Now after 1908, what did you do?

A. I sold out in 1908 to Mr. Turner, and went to boss for Bache-Denman at Prairie Creek No. 4.

Q. You were boss for Bache-Denman at Prairie Creek No. 4? A. Yes, sir.

Q. For how long?

A. I think it was July—I am not positive of the date, perhaps July 7th. I was appointed mine inspector of the state of Arkansas—

Q. The following year?

A. About a year and a half from the time I went to work for them.

Q. How long were you state mine inspector?

A. 1910, 1911 and 1912.

Q. Then what did you do?

A. I was appointed commissioner of the operators' association.

Q. What is that?

A. That is the Southwestern Operators' Association, that makes the contracts with the miners and embraces this field down here.

Q. And argues these disputes and hears them?

A. Yes, sir.

Q. You are a judge as to what the contract means?

A. In connection with the miners, we go to the mines, and a dispute is put up to us, and we try to adjust the case, and if we can not, we put it up higher, to another tribunal, which was the arbitrator.

1790 Q. And how long were you state mine inspector?

A. Three years, approximately, 1910, '11 and '12.

Q. I beg you pardon; how long were you operators' commissioner? A. About a year, hardly that.

Q. When did you get through with that?

A. In 1913, the fall of 1913.

Q. Then what did you do?

A. I secured a position with the Oklahoma Coal Company at Dewar, Oklahoma, as general superintendent, and resigned from the commissioner job.

Q. And after that?

A. I came back to Midland, and bossed the Little 6 for Mr. Finney.

Q. What is the Little 6?

A. It is a mine located about a mile and a half north of Midland, Arkansas, which was originally a big Denman mine.

Q. That was one of these mines originally called Mammoth Vein No. 6? A. Yes, sir.

Q. And you were boss there?

A. Yes, sir, foreman for Mr. Finney.
Q. Who was operating that mine at the time?
A. Mr. Finney.
Q. What are you doing now, what have you been doing since?
A. When the war broke out I went into the Y. M. C. A. work.
Q. You have been in that since? A. Yes, sir.
Q. And not in the coal business since 1918?
1791 A. No, sir.
Q. Now, in connection with your duties as mine foreman at No. 4, you of course became thoroly familiar with that mine? Did you come in contact with the other mines of Bache-Denman? A. Not while I was foreman there.
Q. Did you come in contact with the production at Mammoth Vein No. 1?
A. It is located close to No. 4, and we used to get their reports daily on the output. There was kind of a rivalry between the two mines, as to the biggest production.
Q. The rivalry between the superintendents?
A. The mine foremen.
Q. And as state mine inspector, what did your duties call you to do in connection with familiarizing yourself with the different mines?
A. I had to inspect the mines every three months, every 90 days.
Q. All mines in the state? A. Yes, sir.
Q. Did you have to go down in the mines? A. Yes, sir.
Q. All the way through the mines? A. Yes, sir.
Q. Did you go down in the Bache-Denman mines in pursuance of your duties at this time?
A. I did; I would like to qualify that answer a little bit.
Q. All right.
A. Because I stated my duties required me to go there
1792 every 90 days and go thru all the mines—I did not do it, you understand.
Q. You could not physically?
A. That was my duties, and I was required by law to do that.
Q. Why did you not do it?
A. I could not do it, I could not get around in time.
Q. You didn't have any assistant? A. No, sir.
Q. When did you actually get around?
A. About every 6 months, to be frank about it.
Q. You went thru every mine in Arkansas every six months for three years?

A. Perhaps oftener than that, but at least that.
Q. You went thru it from one end to the other.
A. We did not always go into every working place, but we did the first time around, because we had to make a report of the physical condition of the mine.
Q. But you went up and down all the haulage ways?
A. Yes, sir, and the working conditions, and the mines.
Q. You went into the main tracks, but not out to the end of every branch line?
A. We did not go to the face of every working place.
Q. And as commissioner for the operators' association did you visit the mines? A. Yes, sir.
Q. Did you visit the Bache-Denman mines in that connection? A. Yes, sir.
Q. All of them?
1793 A. All but the little Dallas, I don't think I had occasion to visit that mine while I was commissioner; I don't recall it, if I did.
Q. Now, Mr. Freeze, we will take first Prairie Creek No. 6 mine. What was the production of that mine, in tons per day, at the end of 1913?
A. I couldn't tell you in 1913, I don't think; up to that year I was pretty well familiar with it.
Q. You said you were operators' commissioner up to the fall of 1913?
A. I had no occasion when commissioner to keep track of tonnage.
Q. What was it at the end of 1912, when you were mine inspector?

Mr. Warrum: Now, if the court please, the defendants object to this, because based upon the record in the former cause, the testimony of Mr. Bache himself, the Supreme Court has found—and I apologize for mentioning the Supreme Court—has found that the production was so much, and that its relation to the production of the field with which the complaint requires them to compare it, was in a certain proportion, and was negligible.

The Court: This being a retrial of the case, proceed.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. What was the tons per day?
A. We rated it as a 600 ton mine, when I was mine inspector.
Q. Prairie Creek No. 4?
A. You said Prairie Creek No. 6.

The Court: You did say six.

1794 Q. There is no Prairie Creek No. 6, Prairie Creek No. 4, where you were foreman.

A. You said Mammoth Vein No. 6. Prairie Creek No. 4, where I was foreman, at the time I was foreman in 1909, ran about 800 tons a day.

Q. I didn't ask you that.

Mr. Warrum: We renew our objection if the court please.

The Court: Let's get down closer.

Q. At the end of the 1912, what was it, when you were mine inspector?

A. About the same as when I was foreman, perhaps a little more, if any difference. They had developed more.

Q. What would you say, 800 tons?

A. Between eight and nine hundred ton.

Q. That was the production? A. Yes, sir.

Q. Per day? A. Yes, sir.

Q. Mr. Freeze, what, if anything, were the conditions, extraordinary conditions at Prairie Creek, in connection with the union scale, which prevented the increase of production there?

Mr. Warrum: The defendants separately object to this question for the reason that it is incompetent, and does not tend to throw any light on the plaintiffs' contention.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

1795 A. Two elements enter into it, one was that they could only use one man in a room, which made the development greater for the same amount of miners, and another was a one sided mine, in which they could not make a contract with the miners and drive the slope, and open up the other side of the mine.

Q. Explain that latter condition.

A. If a man, for illustration, had an 80 acre farm, and 40 acres in cultivation, and the other grown up in brush, and he could not get men to work it, or make a contract for it, by which it would pay him to work it, it would naturally lay idle, and that condition existed down there, and they could not make a contract, while I was boss. I understood afterwards, when I was mine inspector, it was not opened up because they could not make a satisfactory contract with the miners.

Q. What do you mean by "satisfactory contract"?

A. It was left to local settlement.

Q. What do you mean by that?

A. The contract recites all slopes in Arkansas are left to local settlement, and it was up to me at No. 4 to make a contract with my local men, and I was not able to do that, one that the company at least thought was a satisfactory basis.

Q. What do you mean by satisfactory basis?

A. It cost too much money, and they did not think it would pay to open the mine and pay that price on slope. It would have been a part of the contract, if we had agreed on that condition, and it would have been in the contract.

Q. You could not make a contract at rates and under
1796 conditions which would get you back one dollar for every one you spent?

Mr. Warrum: We object to that as leading and suggestive, and calling for testimony that is utterly incompetent.

Mr. Drinker: I will withdraw it.

The Court: Very well.

Q. Mr. Freeze, I want to go over with you briefly the conditions relative to cost of operation between union and non-union mines. Will you mention briefly what are the principal conditions in a union mine, as distinguished from an open shop mine, affecting the cost of production?

Mr. Warrum: The defendants renew their objection to this class of testimony.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. First, as to railroad cars at the tipple.

A. For instance, under union conditions, if you had no railroad cars at the mine in the morning, at starting time, the miners will not go down, where the custom was before they had a union, it was customaray for the miners to wait and go down and get out coal until the cars were set, if they had assurance they would be there.

Q. In a union mine, if there are no cars there, what happens to that day's work? A. They lay idle.

Q. Even if the cars come in in an hour or two?

A. Yes, sir.

1797 Q. Now, as to shut downs on account of funerals?

A. Under union conditions my experience is as foreman and operating a mine, that my men laid idle when we had a funeral.

Q. Funeral of whom?

A. Of men working there, or a member of his family. However, I can qualify that by this, that the contract says they shall not, but they always do in our mines, at least.

Q. Now as to working on idle days.

A. It was customary before we had the union, for men to go down on idle days, the first day after the mine closed, which I did myself many times, an dprepared coal for the day that they did run.

Q. By an idle day, do you mean a day when the company was not actually shipping coal in cars?

A. And for any reason the mine was laid idle, it was customary for us to go down and mine coal and prepare coal for the day that they would hoist, whether the next day, or two or three days hence.

Q. As it were, manuring the ground, and cultivating the soil?

Mr. Warrum: We object to a question of that character.

Mr. Drinker: All right.

Q. How about development work in dull seasons?

A. Well, I am not so familiar with that, I can not answer that definitely.

Q. Don't answer anything that you are not personally familiar with. Now, you have mentioned the question of the price being affected by slope driving. How about chang-

1798 ing from one system of mining to another?

A. You could not change, under unionism, because there is a contract setting a previous custom covered by operation of that mine.

Q. Explain that, briefly?

A. Well, if a man was pushing a car down from his face, and had been doing that, if it got so it was a hardship on the miner, that custom was fastened on him, so he could not get away from it, and on the other hand, if the management would give that man a man a day or two to assist him, that would be a custom, and they would have to continue it.

Q. Whether it was necessary or not?

Mr. Warrum: We object to this class of testimony,—

The Court: Proceed.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. I don't think you understand the question that I asked you before, because your answer is related to another condi-

tion that I was coming to later. But is there any condition connected with the changing of system of mining from the gob and panel system, to some other system, if that is correct?

A. You can not change your system of mining; without making another contract.

Mr. Warrum: We object to that.

The Court: Why should we bring this in,—I can't understand it.

Mr. Drinker: I wanted the other witness and this one to explain the reason why the cost of production, open
1799 shop, is so much cheaper.

The Court: Why not, they are qualified as experts on this line, why not ask them the question? If they stated it is greater, why is that not sufficient?

Mr. Warrum: Your Honor put your finger on the proposition as I see it. This testimony is tending to prejudice the jury, you can [sess], as to the attitude of the miners—

The Court: You first qualify a witness to testify to some fact, not to give an opinion as to something else. Now if you come, as I suggest, to the other witness, and ask these questions, I think you will get out all there is in it.

Mr. Drinker: I have gone over five of these, and there are a certain number more, it will only take a few minutes.

The Court: All you are doing is endeavoring to qualify him to state whether there is a difference in the expense of mining coal in a union and non-union mine.

Mr. Drinker: No, sir, I am going to ask the next question, how much could Prairie Creek No. 4 have produced, under open shop, per day, and he is explaining what factors enter into that.

The Court: Then ask him that.

Mr. Drinker: I asked that before, and the Supreme Court put in their opinion 5,000 tons a week, where we thought it was 5,000 tons a day.

The Court: I am not responsible for that.

Mr. Drinker: I would like ever so much—

The Court: I know you would, but you are opening up a matter here that is interminable.

1800 Mr. Drinker: And according to our point of view perfectly uncontrovertible.

The Court: They might think different on the other side. I would rather get down to this case.

Mr. Drinker: Q. Under open shop conditions, how much, if anything, would the production of Prairie Creek No. 4 have been increased, at this period that we are speaking of, without the acquisition of other equipment, or additional mine cars and trackage?

Mr. Warrum: The defendants renew their objection to this class of questions because it calls for a conclusion on the part of the witness, and is purely speculative, and involves factors that can not possibly be told by the witness.

The Court: He is qualified to give his opinion, let him answer it.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. In this particular mine, I would say it ought to raise it 5 to 6 hundred tons a day.
Q. From what to what?
A. From 800, perhaps, to 1400.
Q. And what was the production Mammoth Vein No. 1 at this time, per day?
A. Mammoth Vein production, as I remember it, was 900 tons a day.
Q. How much could that have been increased under open shop conditions?

Mr. Warrum: The defendants renew their objection;
1801 and for the further reason that the matter has been passed upon by the Supreme Court.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. Perhaps to 1500 tons.
Q. How much? A. Perhaps to 1500 tons.
Q. When you say perhaps, you mean that is your best opinion? A. That is my judgment.
Q. Mammoth Vein No. 6, the actual production at that time?
A. The actual production when I was mine inspector, was 600 ton.
Q. And how much would that be increased?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. Perhaps 150 to 200 tons.

Q. Why do you say that increase is less proportionately than Prairie Creek No. 4 and Mammoth Vein No. 1?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and duly except.

A. No. 6 mine was a small mine, and could not work but one man in it.

Q. It would not be possible to work two men together?

1802 A. No, sir, and the others could have worked two, and increased their output.

Q. What was the actual production of the Coronado at this time?

A. We rated the Coronado Company, when I was mine inspector, as 900 ton, about the same as Mammoth Vein.

Q. And how much would that have been increased under open shop conditions?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. Perhaps three or four hundred tons.

Q. Why is that increase less proportionately than at Prairie Creek No. 4 and Mammoth Vein No. 1?

A. Because they were already working two men in each room.

Q. Were there any miners, other than Coronado, in the Bache-Denman group, that were permitted to work two men in a room, under the union contract?

A. Not to my knowledge, there was not.

Q. Coronado was 900, and what was the increase?

A. I said increased about 300 tons, three to four hundred.

Q. Nine hundred to twelve hundred. Now, take the Hoffman mine. How much was that production?

A. It was rated at 700 ton mine.

Q. How much would that have been increased under open shop conditions?

Mr. Warrum: The defendants renew their objection.

1803 The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. The same condition holds good there as Prairie Creek No. 4; four or five hundred tons.

Q. And the Dallas mine? A. It was 300 ton mine.

Q. How much would that have been increased?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. I doubt if it could have been increased materially or not.

Q. Why not?

A. The physical conditions of that mine are very bad; bad roof, and one side was very low coal, and the other side that had the high coal, had a very small territory to work.

Q. Would the supervision of the mine, under open shop conditions, and the other features you have discussed, increase the production at all?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. The same condition would have held good in that mine as Little 6, you could have increased it some by the management, because under union conditions your management

1804 is not what it would be otherwise.

Q. How much, in your best judgment, could that have been increased?

A. From 300 to 400 tons. I don't mean increased three to four hundred tons, but up to 400.

Q. Mr. Freeze, as mine inspector were you familiar with the relative operating conditions at Bache-Denman mine and at the Central Coal & Coke Company mines?

A. Yes, sir, I was familiar with all the operating of all the mines, of course, to the extent that I inspected them.

Q. Taking the group of mines under one ownership, what were the mines having the largest production and capacity in the state of Arkansas? A. The Central Coal & Coke Company.

Q. And what were next?

Mr. Warrum: We object to that as utterly immaterial and irrelevant, and will tend to throw no light on the issues in this case.

The Court: I can't see where it will.

Mr. Drinker: I want to show that the Bache-Denman mines were, as he says, the largest in the state of Arkansas.

The Court: He said the Central Coal & Coke Company were. Very well, let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. What were the next largest? A. The Bache-Denman.
Q. What, if any, mines in Sebastian County had a
1805 larger actual production than Mammoth Vein No. 1, Bache-Denman?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. No. 3 and No. 6 Central.
Q. In your opinion could Mammoth Vein No. 1 have actually produced, under open shop conditions, as large a production as those mines?

Mr. Warrum: The defendants renew their objection, and for the further reason that it is purely speculative and conjectural.

The Court: Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. I think so, yes, sir.
Q. How much did those mines produce, do you know?
A. Well, I would say 1500 tons was about the average output of those two mines.
Q. Did they work one man in a room or two?
A. They worked two.

Mr. Drinker: You may cross-examine.

Mr. Warrum: No questions.

(Witness Excused.)

Mr. Drinker: I wish to recall Mr. McAuliffe.

1806 EUGENE MCAULIFFE, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. McAuliffe, in the Arkansas field, which group of mines were the largest in the field?

Mr. Warrum: The defendants object to this because it is incompetent, and does not tend to throw any light on any issue in this case.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. The Central Coal & Coke Company mines.
Q. Which were the next?
A. The Bache-Denman properties.
Q. Which were next after that?
A. Western Coal & Mining Company.
Q. As between the Western Coal & Mining Company and the Bache-Denman, what was the actual output; was it the same or different?

Mr. Warrum: The defendant renew their objection.

The Court: From what he said they must be different, because he said that the Bache-Denman produced more than the Western Coal & Mining Company.

By Mr. Drinker:

Q. Did the Western Coal & Mining Company sell all its coal on the open market?

1807 A. No, sir.

Q. Where did most of their coal go?

Mr. Warrum: The defendants separately object to what the Western Coal & Mining Company did as they are not a party to this suit, and their conduct would throw no light on the issue in this case, and it is utterly irrelevant and immaterial.

The Court: I am inclined to think it is, but let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. The Western Coal & Mining Company was primarily Missouri Pacific Railway fuel property.

Q. And they use their coal on their own rails?
A. The major portion.
Q. From the point of view of operating efficiency, railroad connections, and all physical conditions other than the condition in connection with the employment of labor under the union contract, what mines in the Arkansas field would you say were the best mines?

Mr. Warrum: That calls for a pure conclusion, and defendants object to it for that reason.

The Court: Oh, I think so.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. I will put it this way: Do you know of any mines in the Arkansas field that were better and more desirable mines to operate, if proper labor could have been obtained to operate them, than Prairie Creek No. 4 and Mammoth Vein
1808 No. 1 and Coronado mine of the Bache-Denman Coal company?

Mr. Warrum: The defendants renew, their objection.

The Court: Oh, let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. I think they must be classed as among the most favorably situated mines in the district.

Mr. Drinker: That is all.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness Excused.)

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Mr. Lucas: If the court please, I am not certain just how for Mr. Drinker went, but we will now offer the testimony, as it appears in the record, of the previous trial, of JAMES H. MEEKS, from pages 1413 to 1421 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the

reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in the case.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

1809 "JAMES HENRY MEEKS, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. James Henry Meeks.
Q. What is your present occupation? A. A miner.
Q. Are you a union man? A. Yes, sir.
Q. How long have you been a union man?
A. Well, since 1898.
Q. Since 1898? A. Yes, sir.
Q. Do you remember the day of the battle at No. 4?
A. Yes, sir.
Q. At Prairie Creek? A. Yes, sir.
Q. Will you state what you heard and saw on the morning of that day? A. Which one, from the 6th to the 17th?
Q. July 17th?
A. Well, I had not been there in the vicinity for a right smart while until the morning of the fight, and I came back on the night before the fight taken place the next morning. And when I went down in town to purchase some groceries—
Q. Down in Prairie Creek?
1810 A. Yes, sir.
Q. How far from Prairie Creek did you live?
A. I lived about a mile and one-half, I guess, or something like that.
Q. Go ahead.
Q. And about the time I got in there the fight started, the shooting.
Q. What time did you get to Prairie Creek?
A. Well, I would judge it was something about seven o'clock.
Q. About seven o'clock in the morning? A. Yes, sir.
Q. How far is Prairie Creek from Mine No. 4?
A. You mean the town?
Q. Yes, the village of Prairie Creek?
A. It is a quarter or such a matter.
Q. A quarter of a mile? A. Yes, sir.

Q. What did you find at seven o'clock when you got to Prairie Creek?

A. Well, there was quite an unusual crowd, was one thing that attracted my attention.

Q. About how many was in that crowd?

A. Well, I don't know how many there were. There was not so very many then. They were coming and going to and fro.

Q. During the morning, how many men would you say were in Prairie Creek?

A. Well, there was a good,—during the day there was
1811 a whole lot. I could not say how many, but there was several.

Q. By 'several', do you mean several people or several hundred, or do you know about how many?

A. There was a good many. There was, I guess, hundreds of them,—around 500.

Q. Did a good many of them have guns?

A. Yes, they had guns.

Q. What kind of guns did they have?

A. Well, it was a kind of a mixture, what I seen, from shot guns to high powers.

Q. Who lives at Prairie Creek? What kind of a camp is it?

A. Well, there's pretty nearly every kind of a nationality, I guess, several at any rate.

Q. Where did the men work that lived there?

A. They did work at No. 4 until we were locked out.

Q. No. 4, Prairie Creek? A. Yes, sir.

Q. They were union miners then? A. Yes, sir.

Q. Whom did you see that morning that you knew at Prairie Creek?

A. Well, I seen the crowd that generally lived around there. I seen the most of them.

Q. Can you name any that you remember of seeing?

A. Yes, I remember two or three.

Q. Name who they were? A. Charles Bumpass.

Q. Do you know where Charley worked?

1812 A. Well, he was formerly employed by No. 4, but I think at that present time,—well, I don't think he was employed anywhere at the time, but he had worked at Duer, Oklahoma, and had just come back, I think. I don't think he had ever started to work since he came back from Duer, Oklahoma, yet, but he worked at No. 4 before he went to Duer.

Q. Who else did you see there?
A. I seen Mike Menick.
Q. Do you know where Mike worked? A. At No. 4.
Q. Did you see anyone else that you remember?
A. Well, I don't—I knew everybody most, but I can't call them to remembrance.
Q. They were the people you knew that lived around there in Prairie Creek? A. Yes, sir.
Q. Did you see Frank Scofield there that morning?
A. Yes.
Q. Describe what, if anything, he said to you, and what he showed you?
A I don't know just the words he used, but he told me the scabs had got him in the leg.
Q. What did he mean by that?
A. Some scabs out of the stockade had shot him through the leg.
Q. Did he show you the wound in his leg? A. Yes, sir.
Q. How badly was he wounded?
1813 A. Oh, not much, it looked a half of the width of a bullet.
Q. Did you know who Frank Scofield was? A. Yes.
Q. What was his occupation? A. Union miner.
Q. Did you know whether he was at that time or had been secretary of the local?
A. He had been and he was at that time.
Q. Of the local in Prairie Creek? A. Yes, 1865.
Q. Did you see the tipple at No. 3 burning that morning?
A. Yes.
Q What time was it?
A. It was a short while after I got in there that morning, probably 8:00 o'clock or probably a little later,—I don't know.
Q. Did you see the results of an explosion over at No. 3 slope? A. Yes, sir.
Q. About what time was that?
A. I believe it was just about the time I seen the smoke of the tipple,—just about the same time, or something near it.
Q Were you over at the school house during that day?
A. Yes, sir.
Q. Quite a bit? A. Yes, sir.
Q Did you see that crowd of non-union men that had been captured and brought over to the school house? A. Yes.
Q. Describe what you saw in that connection?
1814 A. Well, I saw some six or eight men,—I don't know how many. I seen them coming up, and it was report-

ed by someone that they was non-union men, scabs, they were termed.

Q. Who, if anyone that you remember, was in the crowd of union men that had captured them?

A. No, I didn't say they captured them.

Q. Was Charley Blackburn in that crowd?

A. He was there, but I did not see those men captured. I just saw them after they had them.

Q. He was one of the union men that had them?

A. I don't know that he had them. He was in the crowd the same as the rest of them.

Q. Do you know where Charley worked?

A. No, sir, I don't.

Q. Do you know he was a union miner?

A. I didn't know he was, but I supposed he was.

Q. Was there anything said at that time about some United States marshals? A. Yes, sir.

Q. What was that?

A. The report came in, some way or other, that the United States marshals were getting off of the train at Midland, and would be over there in a few minutes.

Q. What did they decide to do as a result of that?

A. I think what they intended to tell them was just to hold their peace a little bit until they got through what they
1815 were going to do, and they would give up to them.

Q. What did they do at that time when the talk was that the United States marshals were coming? Did they stay right at the school house? A. The union men did.

Q. Did the non-union men leave? A. Yes, sir.

Q. Where did they go?

A. They went back up the hollow somewhere.

Q. Did they go alone?

A. No, there was a party sent with them.

Q. Do you know who those parties sent with them were?

A. No, sir, I don't.

Q. Were they union men? A. Well, I don't know.

Q. Would you say that the non-union men went up there alone, without any union men?

A. No, sir, I would hardly think so. There was men went with them, but I don't know whether they belonged to the union or not.

Q. You do not know who the men were?

A. No, sir, I didn't know their names,—I didn't know the names of any of them that went up there.

Q. Did you see Jim McNamara that day? A. Yes, sir.

Q. Who was Jim McNamara?

A. Well, I don't know just what he was.
Q. He worked over at Central No. 4, did he?
1816 A. Yes, he worked at Central No. 4, check weighing, I believe was his occupation.
Q. Where did you see him?
A. I saw him at the well at Mastell's store getting a drink, I believe it was.
Q. At Prairie Creek? A. Yes, sir.
Q. About what time was that?
A. It must have been nine o'clock, or something like that.
Q. You stayed around there practically during the whole of the battle, did you, Mr. Meeks? A. Yes, sir.

Cross-Examination

By Mr. Warrum:

Q. You say in the morning about seven a. m., you saw an unusual crowd around Prairie Creek? A. Yes, sir.
Q. Were you then in Prairie Creek? A. Yes.
Q. Did you afterward walk over to the school house,—is that it? A. Yes, sir.
Q. How many hundred people were in that crowd?
A. Well, I don't know, I could not say. There were several.
Q Can you approximate it, the number?
A. No, sir. I could not possibly give the number.
Q. You say there were many guns in the crowd?
A. Yes.
1817 Q. And were there many without guns?
A. Yes sir, there were some without guns.
Q. Were you a union miner then? A. Yes, sir.
Q. Did you have a gun? A. No, sir.
Q. Did you do any shooting that day? A. Sir?
Q. Did you do any shooting that day?
A. Well, yes, I guess I did, late that evening.
Q. Where did you shoot late that evening?
A. I just shot to be a doing.
Q. Were you shooting at a target or at somebody?
A. No, sir, I just shot up to be a doing.
Q. Did someone hand you a gun? A. Yes.
Q. Did you shoot it up in the air? A. Yes.
Q. You shot it once?
A. I shot it twice, I believe, and got a cartridge hung in it and could not operate it any more.
Q. What time in the evening was that?
A. I guess about four o'clock.
Q. Was the battle over? A. Yes, sir.
Q. Had everyone gone away?

A. Everyone had gone away from the tipple and gath-
1818 ered upon the big road.

Q. Did you do any shooting while the people were there? A. No, sir.

Q. Did anyone offer you a gun?

A. No, sir, only the one I taken.

Q. What? A. The one I taken.

Q. I mean during the battle?

A. No, sir, I didn't have any gun then.

Q. How long have you lived in that neighborhood?

A. Well, I have been there and around Huntington for about,—ever since 1898 or 1897.

Q. Did you recognize a great many of these people that were in and about there? A. Yes, sir.

Q. Were there a lot of people that were there that were not union miners? A. Yes, sir, there was lots of them there.

Q. Who were they, were they farmers, merchants and men in other businesses? A. Yes, sir.

Q. How many of them?

A. Well there was lots of them.

Q. Were there any from Huntington that you knew that were not union miners?

A. No, sir. I don't know very many people at Huntington.

Q. Who were they, farmers around there?
1819 A. They was farmers and preachers and doctors.

Q. Were there any lawyers?

A. I don't know that I saw any lawyers.

Q. Did you see the sheriff there?

A. I seen constables and marshals.

Q. You seen the constables there, did you?

A. Yes, sir.

Q. Did you see any judge there?

A. I don't know. There was one there,—probably two, I believe.

Q. Do you know how many farmers you saw in that neighborhood? A. No, sir, I don't.

Q. What time was that Frank Scofield showed you the wound in his leg?

A. That was in the morning about a little before or after that No. 3 burned; I don't know just exactly when it was.

Q. Did he tell you that the men from Mine No. 4 had shot him? A. Yes.

Q. Did he say who? A. No, he didn't know.

Q. He didn't know? A. No.

Q. Did he say when he had been shot?

A. How is that?

Q. Did he say when it was that he had received his wound?
A. Yes, sir, he told me it was just before that. He was on his porch. He was showing me the place.
Q. When did he say it was he had been shot?
1820 A. He was shot in the morning, I believe it was.
Q. How long had you been away from there? You said you had just returned the night before?
A. I think it was something like three weeks.
Q. Had you been in Prairie Creek or Frogtown previous to your going to Oklahoma, as I understand you were there during this three weeks' stay?
A. I had been in Prairie Creek.
Q. Did you know of guards shooting into Prairie Creek?
A. No, sir.
Q. You never saw them there with guns?
A. Yes, sir, I have seen them in the town with guns, but not shooting.
Q. Prairie Creek is not within this enclosure?
A. No, sir, not hardly.
Q. Who gave you that gun on the evening of July 17th?
A. I don't know him, some man came and took it. I never knew whose gun it was nor who took it, nor who I got it from. There was some man came up and was looking at the gun. I was not acquainted with.
Q. Where were you when it was handed to you?
A. In the big road up there, right southeast of No. 4.
Q. Near the school house?
A. No, sir, it was on south of the school house.
Q. In the public road?
A. Yes, sir, in the public road.
Q. What local did you belong to?
1821 A. 1565.
Q. Where is that local? A. At Prairie Creek.

Redirect Examination

By Mr. Hull:
Q. What is the name of the preacher you saw there that day?
A. Well, I didn't see the preacher there, but he was telling me he was there.
Q. I thought you told counsel for defendants that you saw a preacher there?
A. No, he asked me who was there. I did not see him.
Q. You were telling what you heard?
A. He told me out of his own mouth he was there.

Recross Examination

By Mr. Warrum:

Q. Now, I am asking you about what you know, Mr. Meeks. In this crowd of several hundred persons, you recognized a great many people, did you not? A. Yes, sir.

Q. That is, aside from what others told you?

A. Yes, sir.

Q. Didn't you see a great many people there that were not union miners at all?

A. Well, yes, sir, I seen several there that did not belong to the union at all and were not miners.

Q. And were they the farmers and the merchants and the bankers you talked about?

1822 A. Yes, sir, I seen farmers and dry goods men and grocery men and drug store men out in the crowd.

Redirect Examination

By Mr. Hull:

Q. You saw S. O. Harris there, didn't you, that morning?

A. I cannot call to remembrance seeing him.

Q. Was he the dry goods man you referred to?

A. There were two or three dry goods men there.

Q. What were their names?

A. One, if I am not mistaken, was Mr. Hamilton.

Q. Luke Hamilton? A. No, W. J. Hamilton.

Q. What doctors did you see there?

A. Well, I seen Dr. Chambers there, but I don't recollect whether I seen him on the 17th or not. He was there on the 6th. I won't say for certain I seen him on the 17th.

Q. What other doctors,—what doctor did you see except him? A. I am not certain.

Q. What bankers did you see?

A. I don't think I seen any bankers.

Q. I thought you answered counsel that you saw bankers there?

A. No, sir, I didn't understand him to ask that.

Q. What farmers did you see there?

A. Fred Smadley was one and several other fellows were farmers. Probably they belonged to the miners union, too, but they farmed."

(Witness excused.)

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1823 Mr. Lucas: We offer the testimony of BASCOM ALLEN at the former trial, found on page 1697 to page 1699, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former re-

cord on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [wirness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. State your full name? A. Bascom Allen.
Q. Where do you live, Mr. Allen?
A. I live here at Fr. Smith, Ark.
Q. You are running a garage here? A. Yes.
Q. In July, 1914, what was your business?
A. Well, I drove a car part of the time at the hotel and tended to the office at night.
Q. You are a nephew of Joseph A. McConnell, proprietor of the Grandview Hotel at Hartford?
1824 A. Yes.
Q. Were you working for him at that time?
A. Yes, sir.
Q. Do you remember the day of the battle of July 17th at Prairie Creek? A. Yes.
Q. The night before that battle, what was the condition, if you noticed, of the streets of Hartford?
A. Everybody was out on the streets very near.
Q. Did you see any guns? A. Well, a few.
Q. Did you hear any talk on the streets about what was going to occur?
A. I heard they were fixing to go out to Prairie Creek and run the felows off that was out there.
Q. Did you see Jim McNamara that night?
A. I seen him late that evening.
Q. Did he have a gun?
A. I believe he did.
Q. Did you see him leave Hartford?
A. Yes, sir.
Q. State the circumstances?
A. I seen him go up the street toward Prairie Creek.
Q. Was he with anyone?
A. He was by his self, I believe, when he was going
1825 up the street. There was so many moving up that way you could hardly tell who they were with.

Q. And did you see a crowd of about 100 people going out that way? A. Or more than that, I guess.

Q. State whether or not they had guns?

A. There was a few of them had guns. They didn't all have guns that I seen.

Q. What did Jim McNamara seem to be doing on the 16th of July, the day before the battle?

A. He seemed to be awful busy. I didn't know just what he was doing. He was running around on the street a good while.

Q. What did you see him do?

A. He was talking to first one and then another around there.

Q. Did you see him the next morning, the day of the battle? A. I believe I did.

Q. Where was he?

A. He came down the street going toward his home, I believe.

Q. About what time was that?

A. I think it was about seven o'clock.

Q. You went out to Prairie Creek, or at or near Prairie Creek No. 4 about noon, or in the afternoon that day?

A. I passed by there, yes, sir.

Q. What did you see out there?

A. Well, there was quite a few people out there then.

Q. How many would you say was out there?

1826 A. They were all around, I expect there was 500 around close there, or more.

Q. That was as you went out from Hartford toward Prairie Creek?

A. Yes, sir, they were all along the road there.

Q. Who were those men you saw out there?

A. Well I could not give any of their names. Most of the people around there, I knew their faces and knew they belonged there but don't know their names.

Q. Were these men that you had seen around Hartford?

A. Yes.

Q. Did you know what their occupations were?

A. I knew they were miners.

Q. Were there any non-union miners in Hartford?

A. No, sir."

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:

"Q. Did you see any women or children out there?

A. I don't believe I did; not unless I seen them going toward Hartford.

Q. Did you see any of them coming back?
A. No, I came back by Mansfield, I didn't come by the mines.
Q. Did you see any business men out there?
A. I suppose there was.
Q. Did you see any foreigners out there?
A. I don't believe there was any foreigners out there.
Q. They were scattered all along the highway from
1827 Hartford to Prairie Creek?
A. Yes, they was all along the road and around the mines.
Q. What mines? A. No. 4 and No. 3.
Q. What time were you out there?
A. That was some time that day, I could not give you the exact time on it.
Q. Was it in the forenoon or in the afternoon?
A. It was along about noon or just after noon, I could not swear exactly what time it was.
Q. Was the tipple on fire at that time?
A. No, sir, the tipple wasn't on fire at that time.
Q. How long did you remain out there?
A. I just passed by, I didn't stop.
Q. Were you coming this way or going the other way?
A. I was coming to Midland.
Q. Did you go back that way?
A. No, sir, I went to Huntington and Mansfield and back from Mansfield to Hartford.
Q. You say there was considerable excitement in the town of Hartford the day before the battle?
A. Yes, sir.
Q. And the night before?
A. The day before and the night before, both.

Witness excused.

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1828 Mr. Lucas: We offer the testimony of W. T. FORRESTER at the former trial, found on page 1402 to page 1405, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [wirness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial,

and will not throw any light on the contention of plaintiffs on any issues in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. Your name is W. F. Forrester? A. W. T.
Q. W. T. Forrester? A. Yes, sir.
Q. Where do you live, Mr. Forrester?
A. I live at Hannah, Oklahoma.
Q. What business are you engaged in?
A. Hardware and furniture.
Q. Did you live at Hartford, Arkansas, in 1914?
A. Yes, sir.
Q. In what business were you engaged in there?
A. Hardware and Furniture.
1829 Q. How long had you done business at Hartford?
A. Well, I had been in the Hardware business about three years.
Q. Were you in business there on July 17th, the day that the Bache-Denman mines were burned and blown up?
A. Yes, sir.
Q. You were in the hardware business on that day, were you? A. Yes, sir.
Q. State whether or not you sold any ammunition that day?
A. Well, I don't know that I can say just now that I did, but I suppose I did. I sold a little most every day. I was in the business.
Q. Did you get information of a difficulty that was going over at Prairie Creek that morning? A. I did, yes, sir.
Q. What time did you get that information?
A. Well, I couldn't say, some time after seven though.
Q. Was it after that that you sold the ammunition?
A. Well, if I sold any on that day it was.
Q. You testified in the contempt proceedings, did you not?
A. Yes, sir.
Q. Did you not say, for the purpose of refreshing your memory, did you not say that you did sell ammunition on that day, and sold out all you had, which was not very much?
A. I couldn't say that. No, sir. I sold, I expect, some ammunition, but who it was to I don't know.
Q. Mr. Forrester, you gave your testimony soon after
1830 the occurence of July 17th, did you not?
A. Yes, sir, I did.
Q. Here in the United States Court? A. Yes, sir.

Q. That testimony was read over to you today by me, was it, just this afternoon? A. Yes, sir.

Q. Now, refreshing your memory, I will ask you if you did not say in that evidence that you sold ammunition on that day, and you sold all you had, which was not very much?

A. Well, I believe that I did, yes, sir. That is the metallic cartridges.

Q. What kind of ammunition did you sell? Is that your recollection, as to the fact, what you stated there?

A. Well, what I stated there is the best I recollect it.

Q. What kind of ammunition did you have in the store?

A. Well, I had, I suppose, shot gun shells and some metallic shells, cartridges.

Q. What do you mean by metallic shells?

A. Winchester and target shells, and so on.

Q. And do you know from whom you first got the news that morning of the difficulty? A. I do not, no, sir.

Q. You heard it early in the morning, I believe you said?

A. Something after seven o'clock, I don't remember what time. I know it was after seven because I never went to town until seven.

1831 Q. Did you or did you not hear it as soon as you got to town?

A. I can't say that I did or did not. I don't know, but soon after that time.

Q. Did you order and keep in stock after that some additional ammunition, including shells for high powered rifles?

A. I did, yes, sir.

Q. Sell any of them after that? A. Yes, sir.

Q. To the local trade there?

A. To the local trade, yes, sir.

Q. The majority of the men working there are union miners, are they not, and were so at that time?

A. Yes, sir.

Cross-Examination

By Mr. Warrum:

Q. I will ask you if in your examination by Mr. McDonough which he has called to your attention in the contempt proceedings, if you were asked this question: "Q. Did you sell ammunition on the 16th after dark? A. No, sir.

Q. Did you sell it before dark on Thursday evening?

A. I don't remember the date, I never sold any ammunition before that racket over there."

A. The meaning of that question would be that I never sold any high powered shells before then, any more than just the common run of ammunition that I kept in the store for sale.

1832 Q. And this question, this further question was asked and answered: "You knew before the mine trouble at No. 4 you never sold any before that?

A. No, just occasionally when a man came over and dropped in and called."

A. Just the common run of trade, dropping in and calling for shells all the time. I suppose I sold some every day.

Q. You did sell some ammunition of the ordinary kind from time to time? A. Yes, sir, every day, I suppose.

Q. Do you remember the occasion of the citizens putting a guard about Hartford just before this affair?

A. I don't know that I did, no, sir.

Q. Do you remember of the shooting up of Frogtown the Sunday before this July 17th?

A. I remember of hearing of it, yes, sir.

Q. And you do remember whether or not these were guards thrown about Hartford after Frogtown was shot up?

A. I don't know that I can say there was or was not?

Q. You didn't sell any ammunition for that purpose?

A. No, sir, not that I know of.

Q. Did you hear of the guards being put about the town?

A. I couldn't say now that I did. I might have, but I cannot say now for sure.

Q. When did you leave Hartford?

A. I have been away from there a little over a year.

Q. Did you sell any ammunition to Mine No. 4, Bache-
1833 Denman Mining Company?

A. I couldn't say that I did or did not. I don't know who all I sold it to, now.

Q. Do you know any of the guards that were at that mine?

A. I do not, no, sir.

Redirect Examination

By Mr. McDonough:

Q. At what place did you say you were living now, and doing business now? A. Hannah, Oklahoma."

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Mr. Lucas: We offer the testimony of J. F. RAUSER at the former trial, found on page 1753 to page 1755, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the

reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your full name. A. J. F. Rauser.
Q. Where do you live, Mr. Rauser?
1834 A. Down in Clarksville.
Q. Clarksville, Arkansas? A. Yes, sir.
Q. What is your occupation? A. Farmer.
Q. Do you remember the time when there was trouble over at Prairie Creek on July 17th, 1914? A. Yes.
Q. Were you some relation to John Baskins?
A. Yes, sir, brother-in-law.
Q. Did you and Charles Baskins, a brother of John Baskins, go over to Prairie Creek on Saturday July 18th to look for the body of John Baskins? A. Yes, sir.
Q. State where you went and with whom you went and what occurred?
A. I lived north of Hartman then, and my father-in-law wanted me to go with Charles and get the body and he came up on the slacker that morning, Saturday morning, and some folks told us it was dangerous to go over there, and we met Tom King.
Q. Who was Tom King?
A. A Union organizer, and told us he would write a paper to take us over there safe and he introduced us to Sam Wooton.
Q. Who was he?
A. He was district board officer at that time.
Q. Of what? A. Of the union.
1835 Q. Tom King introduced you to Sam Wooton here at Forth Smith, did he?
A. On the train going over there.
Q. And you went to Midland with Sam Wooton?
A. Yes.
Q. What happened after you got to Midland?
A. We hired a hack and Sam Wooton drove the hack down to Prairie Creek.
Q. As you were leaving did Sam Wooton say anything to the City Marshal of the town?
A. Yes, he wanted him to follow us along with more men and guns. And we came on down there.

Q. When you got to Prairie Creek what occurred? You went down there with Sam Wooton? A. Yes.

Q. What did Sam Wooton do when you got to the school house?

A. He stopped the hack and there was a few men in front of us, about 50 yards, and he said for us to hold our tongues and let him do the talking, and he went to these men and talked to them.

Q. Where were these men, at the school house?

A. I don't recollect whether they were right at the school house or not. It was getting dark and I was not acquainted down there. But he talked with them and he brought them up to the hack, and we all talked and he made us acquainted with the men.

Q. To whom did he introduce you?

1836 A. Frank Scofield was one and the other's name I forget.

Q. Did you know Scofield was secretary of the union?

A. I don't know whether he is secretary or not.

Q. What did Scofield say?

A. That there was no one killed he knew of, and if there were he would have them hunted for. And he said to go back to Fort Smith and wait until morning, and get the man that could inform him.

Q. And did you back to Midland?

A. Yes, we came back from Prairie Creek back to Midland and stayed there that night.

Q. On the way back to Midland did you meet the City Marshal from Midland coming down with a posse of men?

A. Yes, sir, we met him as we came back.

Q. Where did you spend Saturday night?

A. At Midland.

Q. In the hotel? A. Yes.

Q. Did you hear any disturbance or commotion that night?

A. We heard some right before we went to bed. They were passing there, and some had guns under their arms, but we went to bed and didn't know nothing about it, and the next morning and the lady at the hotel told us there was 15—

Q. (Interrupting). You needn't state that, never mind what she told you. Was Charles Baskins with you that night?

A. Yes.

1837 Q. He was the brother of John Baskins?

A. Yes, sir."

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:

"Q. You are acquainted with the miners' officers in the district, here, are you?

A. In the district here?

Q. Yes.

A. No, sir.

Q. You say that Sam Wooton was district board officer.

A. Yes. Tom King introduced us to Sam Wooton, that is as far as I know.

Q. Sam Wooton was district board officer? A. Yes.

Q. He was introduced to you? A. Yes.

Q. And Tom King was district officer?

A. Yes, a union organizer."

Mr. Warrum: That is all.

Recross Examination

By Mr. Hull:

"Q. Did you know Tom King yourself?

A. No, sir, not until Charles Baskins made me acquainted with him.

Q. He knew him? A. Yes."

1838 (Witness excused.)

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Mr. Lucas: We offer the testimony of ELMER BOHANNAN, at the former trial, found on page 3163 to page 3165, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. Your name is Elmer Bohannan?

A. Yes.

Q. You are the same Elmer Bohannan who testified here before? A. Yes.

Q. And you are here now in response to a telegram from me asking you to come here? A. Yes, sir.

Q. State to the jury where you were working in July, 1914?

A. I was working for the Arkansas Coal & Mining Company.

Q. You had an interest in that mine, did you?

A. Yes.

1839 Q. Did you bring with you, in response to my telegram, certain documents that showed you had worked there at that time? A. Yes.

Q. State to the jury what became of those documents?

A. Yesterday evening, somewhere about 4:40, or 5:40,—4:40, I left the avenue,—

Q. Speak up, Mr. Bohanna, so you can be heard. Where was this?

A. Coming up Sixth street about 4:40.

Q. Last evening? A. Yes.

Q. Go ahead.

A. As I,—just before I got to the Western Union, someone hollered at me and turned and say Roy Smith and John Pattie and Roy Smith said to me, "Elmer, what made you get on the stand and swear to a God damned lie?" I said, "I didn't know I swore to any lie." He said, "You swore you were connected with the Arkansas Coal & Mining Company at the ..... mines in 1914, and you were not." And I reached into my pocket and got the statements out to show that I drew pay in July and August and he pulled off and hit me.

Q. Where did he hit you?

A. On the side of the head.

Q. Did he knock you down? A. Yes.

Q. When you got up did you look for your papers?

A. Yes.

1840 Q. And could you find them?

A. No, I couldn't find them, and I had them in my hand.

Q. You looked and could not find those papers?

A. Yes, sir, I couldn't find them.

Q. Where had John Pattie and Roy Smith gone?

A. They walked back down the street a few steps and stopped.

Q. State what damage was done to your head?

A. It skinned my ear a little and I had a knot there (indicating).

Q. And that bunch or bump you showed me at 5:30 last night was a result of the blow was it?
A. Yes, sir.
Q. And the bleeding ear you showed me at that time was a result of the blow? A. Yes, sir.
Q. Do you know where those papers are now?
A. No, sir.
Q. Who is Roy Smith?
A. He is Roy Smith from Hartford.
Q. Do you know where he lives?
A. Yes, he lives at Hartford.
Q. Do you know where he works?
A. No.
Q. Do you know where he worked in 1914?
A. I don't know, but I think at No. 4 Central, I am
1841 not sure.
Q. He was a union miner?
A. Yes.
Q. And John Pattie also? A. Yes.
Q. Do you know where John Pattie works?
A. No, I am not sure. He worked at the Bolen-Darnell, No. 4 Central.
Q. Now you may state what those papers were?
A. One of them showed that I was paid $50.00, at the rate of $100.00 per month, for the last half of July, 1914.
Q. You showed that to me yesterday morning, did you, Mr. Bohannan? A. I did.
Q. What did the other one show?
A. The other one was for four days work in August, rated at four dollars a day.
Q. And you showed that to me yesterday morning also?
A. I did."

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:
"Q. Mr. Bohanna, who was present when that difficulty arose?
A. There was several arrived on the scene, but I cannot name them.
Q. Can you name any of them? A. No.
1842 Q. Were any of the officers of the town there?
A. No.
Q. Where did this occur, on what street?
A. On Sixth street here.
Q. On Sixth Street?

A. Yes, between the Western Union and Harper's garage.
Q. What time was that?
A. It was about 4:40, just a few minutes before train time.

Witness excused.

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Mr. Lucas: We offer testimony of J. E. BORING at the former trial, found on page 1740 to page 1746, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court, the evidence has no probative effect, is in competent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at that time duly excepted and still except.

"Q. State your name. A. J. E. Boring.
1843 Q. What is your profession?
A. Agent for the Central Coal & Coke Company at Hartford, Ark.
Q. How long have you been in that position?
A. About eleven years.
Q. Now what is that book that you have brought with you?
A. That is the—
Q. Now, I hand you the books which you have produced here, I will ask you what that is.
A. That is the payroll and the list of all of our employees for April and July, 1914; for the full months of April and July 1914.
Q. Do you have charge of that book?
A. Yes, sir.
Q. What are your duties concerning it?
A. Well, as head bookkeeper, I have charge of keeping the payrolls.
Q. Does that book show who were the employees of your company during those months?
A. Yes, sir.
Q. All the names of the persons entered in there were employees of your company during those months, were they?

A. Yes, sir, at Hartford, Arkansas.
Q. Were your companies operating union mines?
A. Yes, sir.
Q. Were all the employees in your company, during those months, members of the Union?
1844 A. All of these employees at the mines were. All of our employees, excepting in the mercantile and office department were members of the union.
Q. The men's names that appear on that book, were they union miners? A. Yes, sir.
Q. Now I hand you the paper or book, to which I have just been referring, the book marked Plaintiffs Exhibit 57, I hand you now a lot of papers, which you have produced, marked Plaintiff's Exhibit 58, consisting of a number of sheets, and will ask you what they are.
A. They are the original copies of the check-off list that is turned in by the Secretary of Locals 1530 and 1526 of the United Mine Workers of America.
Q. Do the names that appear on there consist of the employees of your company, members of the union, belonging to these locals, whose dues were checked off by your company during those months? A. Yes, sir.
Q. And any man's name who appears on that list, was an employee of your company, and also a member of the union during those months? A. They were supposed to be.
Q. Were they?
A. Where they were not working, they were not our employees.
Q. Is there any qualification you want to make to your answer that these men, whose names appear on that list, were working for the company, and were members of the union?
A. I will say all the men that were checked there were
1845 working for our company. This list will show what they were, and what men were turned in; there were some turned in that have left our employ, and were not checked.
Q. When you say checked, you mean received the check?
A. Yes, sir, and the money was paid to the union. The money was checked off of the employees.
Q. And the persons named signed the bottom of these lists, who were they? A. The Secretaries of the union.
Q. They were the secretaries of the union, did they sign there? A. Yes, sir.
Q. Who made out those sheets?
A. The secretaries of the union.

Q. The person whose name is signed at the bottom made them out, in each instance, did they? A. Yes, sir.

The Court: Under the rules under which you operate your mines there, was it customary for the unions, through its officers, to furnish you a list of their members, and you retain their dues, and pay them direct to the union?

A. Yes, sir, pay them direct to the union.

By Mr. Drinker:

"Q. And that is what I understand these sheets are?
A. Yes, sir.

1846 Q. On which the dues were paid direct to the union?
A. Yes, sir.

Q. Now the number of these sheets, referring to Local 1526, was signed by James McNamara, who was he?

A. He was the financial secretary of the union at that time.

Q. What local? A. 1526.

Q. And some are signed James McNamara, Jr., were they all the same persons? A. All the same man.

Q. Now, do you know whether he was the same James McNamara who was in prison on account of the Prairie Creek trouble? A. Yes, sir.

Q. The same one? A. Yes, sir.

Q. Now, did your mines work on the 6th of April, 1914?

A. Our No. 4 mine did not work at all that day, and I think No. 7 started in the morning, but didn't work all day; I don't just remember now with regard to how long we did work.

Q. Why did they not work, if you know?

A. The principal reason was that there were very few men out there to work that morning, and the management stopped the mine.

Q. With reference to the 17th of July, did all of your mines work? A. No, sir, they did not.

Q. Why not?

1847 A. There didn't any men come to work, is all I can say.

Q. Did James McNamara come back to work for you after he was released from the penitentiary?

A. He came back and worked at our tipple as check-weighman.

Q. How soon after he got out of the penitentiary did he come back to you?

A. To the best of my recollection about two weeks.

Q Who elects the check-weighman? A. The miners.

Q. Do you know whether anything had been done relative to electing any check-weighman before he came out of the penitentiary?

A. That was my understanding, that he was to have the position when he got out.

Q. Where did you get that understanding?

A. Well, from his father is one.

Q. Was his father a union miner? A. Yes, sir.

Q. And that is what he was to have, the position of check-weighman again, as soon as he came back from the penitentiary? A. Yes, sir.

Q. Did he come back when he got out of the penitentiary, and occupy that position?

A. Yes, sir, he occupied that position.

Q. How long did he stay there as check-weighman?

1848 A. Something about like a year, I think.

Q. Now, do you know John Monick? A. Yes, sir.

Q John Monick, who was in jail on account of this Prairie Creek trouble? A. Yes, sir.

Q. Was he working for you before the Prairie Creek trouble? Was he working for you in 1914?

A. He worked for us in 1914, but I cannot say whether he was working at the time of the trouble or not.

Q. Has he been working for you since 1914?

A. Yes, sir, he has, he is working for the company at the present time.

Q How long after he came out of jail did he go back to work for you?

A. I don't think he started in until about July 1917.

Q. Do you know whether or not he is now a member of the union? A. He is.

Q. Do you know what local he belongs to?

A. Local 1565.

Q. Do you know whether he is an officer in that local?

A. I cannot say.

Q. Do you know Clint Burris? A. Yes, sir.

Q. Was he working for you in 1914? A. Yes, sir.

1849 Q. Has he been working for you since?

A. To my recollection he worked two days.

Q. When? A. In January or February, 1917.

Q. Do you know Sandy Robinson? A. Yes, sir.

Q. He is the same man that was in jail on account of this Prairie Creek trouble? A. Yes, sir.

Q. Has he been working for you since?

A. Part of the time since January, 1917.

Q. Do you know what local he belongs to? A. 1565.

Q. Midland? A. I think so.
Q. Do you know C. E. Pattie? A. Yes, sir.
Q. Is that the same Oscar Layton that was in jail for the Prairie Creek trouble? A. Yes, sir.
Q. Has he been working for you since he came out of jail?
A. For a short time.
Q. When? A. To the best of my recollection 1916.
Q. All of these men to whom you have referred as working for you since they came out of jail, in order to work
1850 for you, did they have to be members of the union?
A. Yes, sir.
Q. Do you know C. E. Pattie? A. Yes, sir .
Q. Have you seen him sign his name? A. Yes, sir.
Q. Do you know his signature when you see it?
A. I think I would.
Q. Will you look at your book there, Book A, check 123, and state whether or not C. E. Pattie was working for you, whether that book shows that he was working for you during the last of July, 1914? A. Yes, sir.
Q. He was? A. He was.
Q. Now, when did you see him write?
A. Well, I see him write often, he comes to our office and draws his pay.
Q. Working for you now? A. Yes, sir.
Q. How long has he been working for you?
A. Since July 1914.
Q. All the time since then?
A. Yes, sir, practically all the time.
Q. Will you please look at this paper, handing the witness Plaintiff's Exhibit 42, and say whether that is in C. E. Pattie's hand writing?
1851 A. Well, I would say to the best of my knowledge and belief that is his signature.
Q. Do you know H. M. Stroup? A. Yes, sir.
Q. Is that the preacher?
A. I think he poses as a preacher.
Q. What is the other Stroup? A. G. S.
Q. H. M. is the preacher? A. Yes, sir.
Q. Do you know his signature when you see it?
A. I don't know whether I would or not.
Q. How long since you seen him write?
A. I think in April 1914, was the last time he worked for our company.
Q. Look in your book and find out when he last worked for you? A. April—before April 15th, 1914.

Q. Why did he leave, if your books show?
A. Well, I could not say why he left at all.
Q. You do not know why he left?
A. To the best of my recollection at that time we lost several places in our mines,—seven at that time, on account of trouble in the mine and he was laid off and he never went back to work for us any more.
Q. Do you know why he never came back?
A. No, I don't know just exactly why he never came back. I could not say why he didn't come back. I suppose he
1852 got employment somewhere else.
Q. Don't wander along on the thing, if you don't know.
A. I don't know why he didn't come back.
Q. Did he owe you any money when he left? Would you know whether that is his signature or not, Mr. Boring?
A. No, I could not swear to it.
Q. Do you know that other man whose name is on there?
A. I know Frank Therp.
Q. Would you know his signature? A. No, sir.
Q. You would not know whether it is his signature or not?
A. I would not know that because I don't know that I ever saw him sign his name.

Cross-Examination

By Mr. Warrum:
Q. One of these men you testified about served a term in the penitentiary, didn't he,—is that right? A. Yes.
Q. And the other four served terms in jail, three or four of them? (No answer).
Q. Well, did any of them serve terms in the penitentiary or in jail? A. Mr. Menick served a term in jail.
Q. And Sandy Robinson? A. Yes.
1853 Q. And they came back after their terms were out and began work at your mine?
A. Yes, sir.
Q. Did you at any time decide to allow them to work because they had been in jail or in prison?
A. No, sir, I did not.

(Witness excused.)

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Mr. Lucas: We offer the testimony of Z. T. Beaty at the former trial, found on page 1746 to page 1748, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former re-

cord on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [wirness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of [plaintiss] on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your name. A. Z. T. Beaty.
Q. Who do you work for, Mr. Beaty?
A. For the Central Coal & Coke Company as agent at
1854 Huntington, Arkansas.
Q. At what mine?
A. Mines No. 2, No. 3 and No. 6.
Q. Do you have the same position at those mines that Mr. Boring does at the two mines he testified about? A. Yes.
Q. What was the number of his mines?
A. No. 4 and No. 10.
Q. And you have the three at Huntington? A. Yes.
Q. Have you brought with you the books which correspond to the books he has testified about?
A. Yes, sir.
Q. Covering the other two months?
A. Yes, sir.
Q. And also the check-off list?
A. Yes, the check-off list is just a printed journal and a part of our pay-roll.
Q. Have you just heard Mr. Boring describe the books he brought? A. Yes, sir.
Q. Do these books and check-off lists which you have produced correspond in all respects as to their condition and effect with the books he produced? A. Yes, sir.
Q. How many men are employed at the mines that you
1855 cover?
A. At the present time, or at any time?
Q. At that time, in July 1914.
A. Somewhere between 650 and 700; somewhere along there.
Q. These papers cover the months of April and July of 1914?
A. They cover the whole month of April and the first 15 days of July.

Q. The first 15 days? A. Yes.
Q. Were those mines running on the 6th of April, 1914?
A. I could not say positively to that, but I think not.
Q. You do not know whether they were or not?
A. No, sir, I don't.
Q. Do you know about July 17th?
A. I could not say for sure at that time without looking at my records.
Q. Where are those records?
A. They are in our office.
Q. Who has those records that would show you that?
A. I do.
Q. Did you testify in the contempt proceedings in connection with this matter? A. I did not."

(Witness excused.)

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Mr. Lucas: We offer the testimony of PAUL CARROL HAMILTON at the former trial, found on page 1767 to page 1772, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

1856

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. What is your full name?
A. Paul Carroll Hamilton.
Q. Where do you live?
A. Hartford.
Q. You are the son of the druggist Hamilton there?
A. No, sir, son of the dry good merchant.
Q. What is his name? A. W. J.
Q. Mr. Hamilton, I believe you were at the Hartford station on the night of October 31st, 1914, when there was some trouble there at the station? A. Yes, sir.
Q. Will you describe what you saw that night?

A. I got down to the station as the train was coming in, I went down for the purpose of mailing a letter.

Q. What time was that?

1857 A. Sometime about six or seven o'clock; 6:15, I believe. I saw a crowd at the station, and walked toward the crowd and saw,—

Q. Now, Mr. Hamilton, you will have to talk louder so that we can all hear,—now, please try. What did you see at the station?

A. I saw a bunch or a crowd of men at the station, when the train pulled in I walked up quite close to the crowd, and I saw some men board the train, and my curiosity was aroused and I got on the train right behind them. I saw them march up the aisle, and saw them march the men back that they said were in the custody of the United States Marshal. I didn't know them at the time, but they said they were government men.

Q. Whom did you see in this crowd that got on the train and took those men off, that you recognized?

A. John Champion was the only man I recognized.

Q. You saw a man with a mask? A. Yes, sir.

Q. Could you say from seeing them there, by his face, did you draw any conclusion at that time as to who it was?

A. No, sir, I cannot say that I did; I didn't see his face and couldn't state under oath who he was.

Q. Did you see any of the others who went on the train?

A. No, sir; there might have perhaps been some more, but Champion was the only one that I recognized as a party.

Q. Did Champion have a gun?

A. I don't remember.

Q. Did the man with a mask have a gun?

A. There was a gun in the crowd, but I don't remem-

1858 ber who had it.

Q. You say in the crowd, the crowd that got on the train? A. Yes, sir.

Q. And whom did they take off of the train?

A. I disremember who the man was, Nein was one, I believe; they had them as prisoners.

Q. And did you see Sandy Robinson there at that time?

A. No, sir, I don't remember."

Witness excused.

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Mr. Lucas: We offer the testimony of AMOS SULLIVAN JOHNSON at the former trial, found on page 1928 to page 1931, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your full name?

A. Amos Sullivan Johnson.

Q. Where do you live now, Mr. Johnson?

1859 A. At Midland.

Q. What is your business?

A. My present business,—I am in the coal business a little, a pigeon hole coal business.

Q. Do you remember being in Huntington on the 20th day of July 1914? A. Yes, sir.

Q. Do you remember that day as being the day the Coronado mine burned? A. Yes.

Q. State with whom you were and at what time and what you did on that day?

A. I was with Mr. J. E. Finney. About eleven o'clock, somewhere I judge between eleven and twelve we had gone to Marshal Hayes cafe for lunch. I lived at Poteau at that time. We had been to Huntington to bury my father-in-law on Sunday, the day before. I thought we would go to the cafe for lunch and get an early start for home and after we got through lunch we went out on the porch and we seen the flames going up and the people coming out all along the street and they said it was Coronado burning up. The flames seemed to be several hundred feet high.

Q. From Marshal Hayes cafe, where did you go then?

A. We got in a car and started for home by the way of Mansfield, to go to Poteau.

Q. You passed near Coronado, did you, going home?

A. Yes.

1860 Q. Did you stop, or were you stopped by a crowd of men?

A. We got somewhere about the bridge,—I am not sure whether we crossed the bridge or not. It was just as we were going out of Huntington.

Q. What occurred at the bridge?
A. We met a crowd of men there and we stopped and asked them what was the matter, so many were going and coming, and they said Coronado was burning up. I asked what was the matter and they said they understood about four hundred scabs were shipped in there the night before and they were burning up the town.
Q. Had you been in Huntington the night before?
A. Yes.
Q. Did you know of anything being done in Huntington with relation to guarding Huntington against these scabs?
A. It is my understanding guards were out guarding Huntington.
Q. Against what?
A. Against destruction that might occur.
Q. By whom?
A. The same rumor that came out.
Q. About the scabs?
A. Yes, that was really the understanding, that they were afraid of destruction from the non-union men, the scabs as they called them.
Q. What had you heard about the 400 scabs?
A. It was probably mentioned in response to my inquiry as to what was the cause of the fire, that was relation in that connection. I am not positive exactly the words about it.
Q. State as near as possible what time it was you
1861 stopped where this crowd of men was and they told you this?
A. Somewhere near twelve o'clock.
Q. Did you go by Coronado? A. No.
Q. You turned and went to Poteau another way, did you?
A. Yes, sir."

Witness excused.

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Mr. Lucas: We offer the testimony of MRS. JOHN DEGEN at the former trial, found on page 1405 to 1413, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [wirness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your full name, please?
A. Mrs. John Degen.
Q. I know that you have not a strong voice, Mrs. Degen, but I wish you would please make all the effort you can
1862 to make the last juror back here, and the counsel for the defendants and the court behind you hear wha' you have to say. A. Yes, sir.
Q. Where do you live now, Mrs. Degen?
A. I live with my mother on South M Street.
Q. In Ft. Smith? A. Yes.
Q. In 1914 where did you live? A. At Huntington.
Q. Where? A. At Huntington.
Q. How long did you live there prior to that?
A. Let me see. We lived there about two years, I guess, before that.
Q. You had a family there? A. Yes.
Q. How many children? A. I have five children.
Q. You were living with your husband and five children at Huntington? A. Yes, sir.
Q. Do you remember the day, April 6th, when they had,—marched over to Prairie Creek No. 4? A. Yes, sir.
Q. Please speak up, Mrs. Degen, so that the stenographers can hear your answers.
1863 A. Yes, sir, I will.
Q. Did you see the crowd there? A. Yes.
Q. State what you saw?
A. Well, I just saw a large crowd of miners passing and it looked almost like an army to me, and they had a band in the procession.
Q. Did your husband go with the crowd?
A. No, he didn't go with the crowd, but he went out afterward.
Q. Was he a union miner? A. Yes.
Q. Where did he work? A. At No. 3.
Q. No. 3 Central? A. Yes, sir.
Q. Did you hear any of these union miners say anything as they were going out, as to what they were going to do?
A. Well, no, not right at that time.
Q. Did you hear them soon after that say what they were going to do? A. Yes.
Q. What did they say? How soon after that,—how soon after they went out to the Prairie Creek School house did you hear them talking about it? A. That afternoon.

Q. The afternoon of the same day?
1864 A. Yes, sir, that night.
Q. When they just returned?
A. Yes, I heard my husband talking about it.
Q. State what your husband said they did that day?
A. They said they went out to make a showing.
Q. Did you hear any others talking about what they had done over there that night besides your husband A. No.
Q. Did you see anyone going out with that crowd besides your husband?
A. Yes, I saw all the miners,—the band boys.
Q. Did you see any doctor? A. Yes, I did.
Q. What was his name? A. Dr. Moseley.
Q. Did you see him coming back? A. Yes.
Q. With whom was he? A. Freda Hogan.
Q. Do you know whether Freda Hogan had made a speech that day?
A. I did not hear her make a speech, but I heard that she did.
Q. Do you remember the night of the day of the big battle over there, July 17th? A. I remember that night.
Q. Do you remember the night before? A. Yes.
Q. Were you in Huntington then?
1865 A. Yes.
Q. Tell the court and jury what happened in Huntington that night to your knowledge?
A. The next door neighbor of ours, Luke Hall, came to our door and knocked on our door in a frightened way and wanted us to get up. He said these "scabs" were coming to clean us up and wanted us to get up and get ready for them.
Q. Who was Luke Hall?
A. He was the next door neighbor of ours.
Q. Was he a union man?
A. Yes, he was a union man, he worked at No. 3.
Q. Did he have a gun? A. Yes.
Q. What time was it?
A. It was some time in the after part of the night.
Q. Was it after midnight?
A. I don't know just what time it was.
Q. What did you do?
A. We went across the street to an uncle of his, Ben Hall's, and we stayed there on the porch quite a while, and we were all scared, of course, but pretty soon we began to see people coming from all directions going to town, to hunt ammunition to get ready for the fight, I guess. That is what they said they were going to town for. We sat on the porch a while and saw them going to town and coming back.

Q. In what direction?

1866 A. Going to town and then on the way out towards Ben Hall's.

Q. Out toward the mine? A. Yes.

Q. Did you hear any of them say anything as they went back toward No. 4, what they were going to do?

A. They were talking of going up there and if the scabs opened up their heads they were going to kill them.

Q. Did your husband and another man go out to No. 4 the next morning? A. Yes, they went out the next day.

Q. What time the next day?

A. Sometime in the forenoon.

Q. Who was that man that went with your husband?

A. Mr. Joe White.

Q. Do you know where he worked?

A. He worked at No. 3.

Q. Did you hear him say anything that night when they came back about what happened at No. 4?

A. Not at that time, I didn't hear him say anything that day, but I did afterwards.

Q. How soon afterwards?

A. Well, it has been just two or three months ago that I was down there.

Q. Were you down there two or three months ago?

A. Yes.

Q. Did you hear him talking about the burning up of the mine?

1867 A. Yes, sir.

Q. What did he say to you?

A. Well, he just said that the union did it.

Q. Did you ever hear Tom Evans make a similar statement? A. Yes."

Cross-Examination

By Mr. Warrum:

"Q. Where does Joe White live?

A. He lived on the west side, a near neighbor of ours, about the second house from us.

Q. In Huntington? A. Yes.

Q. Did he live there two or three months ago when you had this talk with him?

A. It was longer than that, it was about February.

Q. About February of this year you had that talk with him? A. Yes.

Q. Now you say on the 6th of April you saw a large crowd of miners with a band, I believe you stated, moving out of Huntington towards Prairie Creek, is that right? A. Yes.

Q. Was there anyone in the crowd on April 4 besides the miners? A. What is that?

Q. Were there other citizens in that crowd besides miners? A. The band boys and a drayman.

Q. Who else?

1868 A. A Drayman.

Q. How many draymen? A. Just one.

Q. Was there a doctor with that crowd? A. What?

Q. Was there a doctor with that crowd?

A. I don't know whether he was just with that crowd or not, but he went out there.

Q. Were there any other citizens that you recall now?

A. Well, yes, all of the miners were there, but I don't remember anyone in particular.

Q. Apart from the miners, were there any citizens in that procession that moved out with the band?

A. Well, I don't know. Most everyone went out there.

Q. How large a crowd was it? A. What?

Q. How large was the crowd that moved out on April 4?

[Q.] It was a big crowd.

Q. What? A. It was a big crowd.

Q. Were there three or four hundred of them?

A. Not that many I don't think.

Q. Were there 200 of them?

A. It was a pretty good sized crowd.

Q. Were there women and children in the procession?

A. I didn't see any women or children in the parade that day.

1869 Q. How were they marching, on foot or in automobiles or in wagons? A. The miners were walking.

Q. In addition to those walking, was there anyone in buggies? A. Along later on there was.

Q. On the same day? A. Yes, sir.

Q. How much later on?

A. Well, all through the day there was quite a considerable all day.

Q. Some going out in automobiles, too?

A. I don't remember whether there were any automobiles or not.

Q. Did you see any of your neighbors going?

A. People all around went.

Q. Were the people all around there miners?

A. Most all were miners.

Q. Your husband was a union miner? A. Yes.

Q. He belonged to the union until the time of his death, did he? A. Yes.

Q. When did he die? A. He died last December.

Q. Now, on the night of July 16th, you have stated in answer to Mr. Hull's question that Luke Hall, a neigh-
1870 bor of yours, came to your house and said the scabs were going to clean us up? A. Yes.

Q. There was considerable excitement in Huntington that night? A. Yes, sir.

Q. There had been considerable excitement in Huntington before that night about scabs coming over, and when I speak of scabs I use the expression Mr. Hull did; is that right?

A. There was excitement along during the whole night.

Q. Yes,—then was there any excitement or rumors before July 16th that the guards with non-union men from Prairie Creek No. 4 were coming over to clean up Huntington?

A. That was the report.

Q. That was the report that you heard several times?

A. Yes, sir.

Q. You had heard the report that Frogtown had been cleaned up by the guards and armed men at No. 4, had you not?

A. I had heard several different stories about it.

Q. Well, was it in connection with the rumors of the cleaning up of Frogtown that the Huntington people were excited over the attack on that place?

A. Well, they just thought they were coming and they were going to be prepared for them, the miners were. And they did prepare, too.

Q. Can you recall what the nature of those rumors were? Were they rumors to the effect that the guards were armed and were shooting around generally and insulting women and children?

1871 A. That was the report.

Q. Was that report general through Huntington?

A. Yes.

Q. How long had those reports been circulated?

A. Well, off and on until,—

Q. Until July 17th?

A. Until they had the battle.

Mr. Warrum: That is all."

Redirect Examination

By Mr. Hull:

"Q. How large a place is Huntington?

A. Well, I don't know, two or three thousand, I guess, I don't know just exactly how large a place it is.

Q. It is a union mine town? A. Yes.
Q. How far is it from No. 4?
A. Well, it is three or four miles.

Mr. Hull: That is all."

Recross Examination

By Mr. Warrum:

"Q. There are a great many people that live in Huntington that are not union miners, aren't there?
A. Yes, a good many; but they are most all miners.
Q. I didn't get the last part of your answer.
A. Most of them were miners.

Mr. Warrum: That is all."

Witness excused.

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1872 Mr. Lucas: We offer the testimony of JAMES R. COLE at the former trial, found on page 1829 to page 1831, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. What is your full name? A. James R. Cole.
Q. Where do you live? A. Ft. Smith.
Q. How long have you lived [her]?
A. This last time I have lived here a little over five years, it will soon be six.
Q. Were you commissioned a deputy United States marshal under Marshal Parker in October 1914, to go down to Prairie Creek? A. Yes, sir.
Q. You were there on October 28th? A. Yes, sir.
Q. Will you state what occurred on that night?
1873 A. About 12:00 o'clock in the night, there were 17 of us there, I think, myself and Mr. Atkisson,—

Q. (Interrupting) Two marshals? A. Yes, sir.
Q. And the rest were employees? A. Yes, sir.
Q. That had been down there to operate the mines?
A. Yes, sir, they had gone down there to work.
Q. When did you get there?
A. We got there, let's see, that was on the 18th, was it not? We got there about the 15th.
Q. How many days had you been there before this occurred, when you were run off there?
A. Two days and night,—one night we stayed in Midland and went down there the next day.
Q. You had been there two days?
A. About two days and nights, yes, sir.
Q. What occurred that night about 12 o'clock?
A. About 12 o'clock we heard the crowd all around the place, and in the woods and shooting at the houses.
Q. State what occurred?
A. Well, there was about, I don't know how many shots was put in,—there must have been over a thousand shots fired into the houses.
Q. Had you built up any protection there for yourselves, in this house?
A. Yes, sir, the boys put up some boiler plates, or some
1874 kind of steel stuff on the inside, and stood them up against the wall.
Q. And did you leave there soon after that shooting began?
A. Yes, sir, I left there about one o'clock, I guess.
Q. Had there been any other deputy marshal there early in the day?
A. Yes, sir, Mr. Sid Johnson was there in the afternoon, and stayed until about five o'clock, I guess.
Q. After you left that house, did you look back and see some fires in that vicinity?
A. Yes, sir, I was going to tell you. I went over the ridge from where we were, and looked over toward the creek, over there, where the mine was, and I stayed over there on the other side of the bluff that night, the balance of the night. I could see fire above there, they would fire a house, they would fire a volley of shots at it and then they would shoot around everything, and then you could see the fire.
Q. Were you armed that night, Mr. Cole? A. Yes, sir.
Q. What guns did you have?
A. Winchester and a six-shooter.

Witness excused.

Mr. Lucas: We offer the testimony of Dr. E. B. JONES at the former trial, found on pages 1833 to 1835, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the
1875 jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. Please state your full name? A. E. B. Jones.
Q. You are a practicing physician at Hartford?
A. Yes, sir.
Q. How long have you been practicing there, Doctor?
A. About 14 years.
Q. Do you remember the night of October 31st, 1914, when you witnessed some trouble at the Hartford station when Earnest Nein was there?
A. Yes, sir, I remember being down there.
Q. Will you state what occurred at the Hartford station, when it was and who was there and what occurred? You may answer. A. Tell about what occurred?
Q. Yes.
A. I don't know that I remember very much. I was standing in the station, in the depot, and someone called my name.
Q. Who was that that called you? A. Nein.
1876 Q. Earnest Nein? A. Yes, sir.
Q. Do you know whether he had been arrested that day by deputy marshal Black?
A. I didn't know of my own knowledge; I thought so; they said he had.
Q. State what Earnest Nein said?
A. He just called me to come out there, and I walked out there and he said they were trying to keep him from going to Ft. Smith and he had not done anything, and he would rather go on in.
Q. You knew Earnest Nein, he was a friend of yours?
A. Yes, sir.
Q. Who had hold of him, if anyone?

A. Well, I believe, as I remember now, the best I remember, I think it was Mr. Layton and Will Reed, just had a hold of him.

Q. Was that Oscar Layton? A. Yes, sir.

Q. And Will Reed? A. Yes, sir.

Q. Do you know where they worked?

A. No, sir, I don't.

Q. Do you know whether they worked at the mines there?

A. I don't know where they worked.

Q. Did they have guns with them?

A. Yes, sir, they had guns with them.

1877 Q. Did you see anyone else there in that crowd?

A Quite a crowd.

Q. Were there any other men with Oscar Layton and Will Reed?

A. No, sir, about the time that that occurred, about the time I stepped out, the marshal stepped up and said,—

Q. (Interrupting.) Who was the marshal? You mean the city marshal?

A. Yes, sir, Cell Goddard, and he said, "Boys, come with me a minute, I want to talk to you"; and they walked off to the west of the depot.

Q. Who walked off with him?

A. These men that were standing there by him.

Q. Who were the men?

A. The men that were standing by him, there were about four, I believe.

Q. Who were those four men?

A. The two I mentioned a while ago, Will Reed and Layton and John Champion, and I took it to be Branch; he had a mask over his face, and I wouldn't be positive.

Q. What is his first name?

A. They call him D. Branch.

Q. Dave Branch? A. Yes, sir.

Q. And did the United States marshal go over there to talk to them?

A. I didn't see him, he was standing in the depot.

Q. You left before any trouble occurred on the car?

1878 A. Yes, sir, I didn't see anything.

Q. Do you know what Earnest Nein's occupation was?

A. Yes, sir, he was a miner.

Q. A union miner? A. I don't know.

Q. Where did he work? A. Central.

Q. No. 4? A. Yes, sir."

Cross-Examination

By Mr. Covington:

"Q. Did you see Nein again that night?

A. I don't think I did.

Q. To refresh your memory, didn't he and Sandy Robinson, two of the men taken away from the marshal, take a car in front of your place and try to catch that train over at Midland and come over here?

A. If they did, I didn't see them."

Witness excused.

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Mr. Lucas: We offer the testimony of GARLAND C. CHOATE at the former trial, found on page 1647 to page 1650, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named
1879 for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

"Q. State your full name? A. Garland C. Choate.

Q. Where do you live? A. I live in Yell, Arkansas.

Q. At what place? A. Near Garnell.

Q. Where did you live in November, 1914?

A. I was living in Danville, Arkansas, then.

Q. Is that in Yell County? A. Yes, in Yell County.

Q. On or about November 18th, 1914, did you go to Prairie Creek as a United States deputy marshal? A. I did.

Q. Who employed you? A. Mr. Parker.

Q. The United States Marshal for the Western District of Ark.? A. Yes.

Q. What were you to do down there?

A. I were to guard the men to work and meet the trains.

1880 Q. Speak so that we can hear, Mr. Choate?

A. I were to guard the men to work and meet the trains. I were to meet all of the men coming into work, and guard them from the train to the work, and to guard them from the work to the train.

Q. You mean the employees at No. 4?

A. Yes.

Q. As you took those men to and from No. 4, between the camp and the mine, state whether or not you ever had any trouble?

A. We never had no trouble. We have had them three or four times where we thought there would be trouble. They would call us scabs.

Q. What would happen?

A. They would get out and gang up in front of us and say, "There comes a bunch of scabs."

Q. Did they call you any names yourself?

A. Yes, sir, they called me a "scab herder."

Q. Do you remember the occasion of moving an engine over at Coronado? A. Yes, sir.

Q. When was that?

A. That was sometime in December, I think.

Q. Were you helping the employees do that?

A. No, I just went with the men to guard the men over there to move this engine.

Q. State what you did [—] that connection and what

1881 happened?

A. I went over there with something like eight or ten men, I think it was, to move an engine, and we got over there and went to work I suppose about ten o'clock. And there was several men gathered around us.

Q. Did they say anything to you?

A. No, only to holler "Scabs", and they continued gathering around there until along about 11:30, and they all disappeared. We thought there was going to be trouble.

Q. Never mind what you thought. Just state what happened. A. That is all that happened that day.

Q. What did [they] employees do you were protecting there?

A. They were taking the engine apart and loading it.

Q. Did they load part of it that day?

A. Yes.

Q. And did you go back the next day and move the other part of it? A. Yes.

Q. What did you find when you went back?

A. The rest of it was all blown to pieces.

Q. Did you find any dynamite around there?

A. Yes, we found one stick that had failed to explode.

The Court: What mine was this?

A. This was at the mine on the Midland Valley. I forget the name.

By Mr. Hull:

Q. Is it the Coronado mine?

A. Yes, the Coronado.

1882 Q. Did you ever attempt to buy things in stores at Midland? A. Yes.

Q. What occurred whenever you tried to buy things there?

A. Well, I never cold buy anything from anyone in Midland, but one store.

Q. What store was that?

A. Buck Tharel's store.

Q. Why didn't you buy things at the other stores?

A. They would not sell them to me.

Q. Do you remember one store in particular at which you were refused goods? A. Yes.

Q. What store was that? A. Overman's.

The Court: Speak a little louder.

A. (Continuing.) I tried to buy some blankets on the first of December and he would not sell them to me.

Q. Was that Joe Overman?

A. I guess so. I was Overman's store in Midland.

Q. How did you have to purchase things?

A. I got a soldier to go buy them for me.

Q. Were you refused at practically every store in Midland?

A. Yes, I tried every store in Midland.

Q. How long were you serving there as a deputy marshal?

A. From the 18th of November until the 3rd of February, 1915.

Q. Were there soldiers there at that time?

1883 A. Yes, sir.

Q. Do you remember on one occasion when a man was brought into camp that had been beaten up apparently?

A. Yes.

Q. State what occurred in that connection?

A. We were at the mine. We were in there together and it happened about ten o'clock at night and Wilson Bowersock and three or four soldiers came over there with a man that had been beaten up. He was in their camp.

Q. That was what they told you?

A. Yes.

Q. What condition was the man in?
A. He was brought in beaten up.
Q. Was he an employee of the camp?
A. He was coming down there to work."

Cross-Examination.

By Mr. Covington:

"Q. How do you know he was coming down there to work?

A. He had been sent from Ft. Smith and had failed to get off at Prairie Creek. He was supposed to get off at Prairie Creek.

Q. How do you know?
A. That is what he said, that is all we had to go by.
Q. Did you know anyone in the crowd at Coronado?
A. No, sir, I didn't.
Q. Who else was brought in when this man was beaten up? A. With him?
Q. Yes.
1884 A. No one.
Q. Were you present the next day when this man and a coal digger and a soldier was tried before the officers down there? A. No, sir.
Q. You were not present? A. No, sir.
Q. Then you did not hear the testimony in the case?
A. No, sir.

Mr. Covington: That is all."

Witness excused.

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Mr. Lucas: We offer the testimony of S. T. Moore at the former trial, found on page 1556 to 1562, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. McDonough:

"Q. Please state your full name.

1885 A. S. T. Moore.

Q. Generally called Buster Moore by your friends?

A. Yes, sir, that is my nick-name.

Q. Where do you live? A. In Fort Smith.

Q. Are you a man of family? A. Yes, sir.

Q. Were you in the employ of what is known as the Bache-Denman Companies in July, 1914?

A. Yes, sir.

Q. In what capacity were you employed?

A. Well, I was in charge of their mines and property in general.

Q. As superintendent? A. Yes, sir.

Q. Do you remember when you went there in charge of their mines as superintendent?

A. Well, I had been with the Bache-Denman Coal Company one way or another ever since they had been in the state, but I went to that mine thirty days, I judge, before this fight we had out there. I don't remember just on what date, but it was something like that.

Q. Where were you on the morning of July 17th?

A. I was at home in Midland. I lived there at that time.

Q. You lived at Midland at that time?

A. Yes, sir.

Q. What was the first knowledge you had, of the diffi-

1886 culty that morning?

A. Well, the first actual knowledge I had, was when I got out to the mines and the men at the mines told me there had been some shooting early in the morning, about 5:00 o'clock.

Q. Did you hear the shooting yourself?

A. No, sir, I did not hear it myself.

Q. Were you at the mine on the day before, on July 16th?

A. Yes, I was there.

Q. And where were you, if you know, on the Sunday before?

A. I was at home. I had been there all the time except to be at Fort Smith occasionally a day at a time. I was there practically all the time. I think I was at home that Sunday.

Q. I wish you would describe what practice you had there with reference to guns, what was done with them when they were not being used by the guards; state if you know.

A. There was a good many guns out there, just the number I don't know, and the guns were kept locked up and kept in

the office we had there except the few used by the fellows we had kind of on picket duty to see that no one came around that had no business there. That was about all the guns that we had. Those were all that we would hand out.

Q. Did you have any knowledge that any of the employees that were under you had anything to do with the so-called shooting up of Frogtown? A. No, sir.

Q. When the guns were not being used by the guards, do I understand you to say that they were locked up?

1887 A. Well, they may not have been under a lock and key, but they were in the office and there was always a man in charge of the office.

Q. Was that the custom—was that practice kept up to the 17th of July, the day of the battle? A. Yes, sir.

Q. Now, on the day of the battle, I wish you would describe what you did when you first got knowledge that the trouble was on, in your own way. Speak out loud so the jury can hear you.

A. Well, I got out to the mine about 7:30, I judge, and the fellows at the mine told me what I have stated, there had been some shooting in the morning before, and I didn't know at that time—I figured that probably there was not going to be any more trouble and Mr. Eustis was there. The telephone line had been cut the day before, and his boy and someone else had gone out sometime before to fix the line and had not come back and he was getting uneasy. And I wanted to go over to Midland and he went over with me to see if he could locate his boy. And we got over at No. 4 camp.

The Court: Speak up a little louder, Mr. Moore.

A. And I noticed a man coming out from his house, leaving his house, and I noticed that two or three times—and I asked him why he was leaving, and he said he was notified to get out, that there was going to be some shooting, that there was going to be a clean-up of the place.

Q. Who was that man?

A. I learned his name was Stanley.

1888 Q. The man on the stand a few minutes ago?

A. He looks like him. It was so long ago I couldn't be sure, but I learned that was his name. I went back to the mines and just about the time I got there they began shooting on the ridge over to the school house and we got out the guns and gave them to the fellows and most of the men that got the guns and cartridges left right away and we had 18 or 20 guns left in the place and thirty odd people. And they kept up exchanging shots around there until about 12:00 or

1:00 o'clock and the ammunition got [lot,] and it looked like it was going to get stronger, and I left the building—left the people that was left there. I wanted to take them across the creek. They all had no money and wanted to go to Ft. Smith. And I went home then and ate dinner and went out to get some money to take them to Ft. Smith and I failed to locate them. I don't know where they went. They didn't stay where I told them to. And I went back home. That is about the sum and substance of the thing.

Q. Do you know—could you see the men that were doing the firing into the property?

A. No, not very well. I could see an occasional man, but I could not tell who he was.

Q. Could you recognize anyone at all?

A. No, sir, I didn't recognize anyone. No one got close enough for me to recognize them.

Q. Did you hear any of the bullets?

A. Yes, sir, a good many.

1889 Q. Where were the bullets going? Where were they striking?

A. Some were going high and some were hitting the ground and box cars and the tipple timbers and one thing and another.

Q. Did any of them come near you? A. Yes, sir.

Q. Was any of the men in your employ hit by the bullets?

A. No, sir, no one in there was hit.

Q. How near did the bullets come to you?

A. Well, they come pretty close. One or two grazed my arm a little.

Q. What kind of bullets were they? Did you see any of them? I mean after they had spent their force did you see any of them?

A. Yes, sir, I picked up two or there. They were of different calibre. Some looked to be larger than others. They were metal jacket bullets. The bullets were battered up and you could not tell what they were.

Q. Can you give any idea of about how many men there were firing into the mines?

A. Well I would judge there were some two or three hundred guns being used.

Q. State whether or not it was continuous with these little intermissions from the time it began in the morning up until about noon? A. No, sir.

Q. Was there any firing of the guns at you or your party you were leaving?

1890 A. I don't know that any was aimed directly at us. Some few bullets hit around. I really don't think any knew we were leaving at the time we left. They may have.

Q. What was the condition of the mine, the tipple, and the blacksmith shop and all that at the time you left, as to whether it was on fire or not? A. No, it was not on fire.

Q. Had any fire been set out before you left?

A. No, sir.

Q. When did you first realize that any of the property had been burned or destroyed by fire? A. You mean No. 4?

Q. Yes.

A. Well, after I left there I could see smoke rising. To my actual knowledge I could not tell whether No. 4 was burning or not.

Q. Was it coming from the direction No. 4 was?

A. Yes.

Q. Did you see any smoke coming from No. 3?

A. I saw No. 3 burning in the morning while the fight was going on. That is one thing that took place early in the morning. Mammoth Vein and No. 3 were both burned. I could see No. 3 plainly and saw Mammoth Vein plain enough to know it was the mine.

Q. Did you hear any explosion?

A. Yes, and there was some kind of an explosion set off in No. 3 mine that connects that underground passage way into No. 4.

1891 Q. Mr. Moore, prior to the battle were you there, if this was prior to the battle—at the time Mr. Berkell was brought into the camp? A. Yes.

Q. State what you know about that?

A. Mr. Berkell had been brought in there before I got there. That was previous to the battle.

Q. That is what I thought.

A. When I got out in the morning they had him over there. One of the marshals was out there, I have forgotten his name now. Anyhow he had him out there in a tent, him and probably someone else when I got there in the morning. Some of the boys claimed to have taken him up trying to cut a telephone line, or something to that effect, or a light wire.

Q. State what was done with reference to Berkell.

A. Well, I asked this marshal what he was going to do with him or what right he had with him, and he said he had none, that he did not have any right to hold him, and so then I told Berkell that we could not keep him there, but would let him come to Ft. Smith with me. And I brought him up here to Fort Smith to the attorneys. He came up in the car with

me. He could have gotten out if he had wanted to any place, but he was [willint] to come, so he stated. He said he was on his way home from some place over there, when the boys took him up and he hadn't done anything and he was perfectly willing to come with me. That was his statement in the matter. And he came up here and I don't know whether the attorneys used him in Court or not.

1892 Q. Do you know whether the trial of the condemnation proceedings were going on at that time?

A. Yes, sir, I think it was at that time. It is not clear to me just now, but I think it was.

Q. Were you down there any more after the battle, Mr. Moore?

A. Well I have been by there since. I was not there right soon after, no, sir.

Q. With reference to the direction of the shooting, could you tell where the first shots were? What direction they came from?

A. Yes, they came from over on the ridge, near the school house or probably along the railroad and between—in that direction.

Q. What direction is that from Mine No. 4?

A. That is west.

Q. Did they come from any other direction during that time?

A. Yes, they came from the south side, above 3 tipple, and some from down the tracks below the mine, from a north direction not exactly north.

Q. Were there any women or children in your party that you were taking away with you?

A. Yes, there were two or three women. One or two of them had babies.

Q. What was done with them?

A. They were in the boiler house, between the boilers.

Q. Where were they at the time of the battle, in the forenoon?

A. That is when they were in the boiler house between the boilers.

1893 Q. You spoke of shots hitting the cars. Were they loaded coal cars? A. Some of them were loaded.

Q. Loaded with coal from the mine? A. Yes.

Q. Was the coal to be shipped out? A. Yes, sir.

Q. Did you look after the billing of it, yourself personally, or someone else?

A. No, I didn't do it myself personally, our bookkeeper looked after that.

Q. Do you know how many cars of coal were loaded to be shipped out?

A. I may have known at that time, but I don't know now just how many there were.

Q. Give your best recollection about that.

A. Probably four or five, something like that.

Q. Did you see Baskins and Sylsberry when they left there? A. No, sir.

Q. They were in the employ of the company, were they?

A. Yes, sir.

Q. What was Sylesberry, was he a coal digger?

A. Well, he had been around the mines I suppose all the time, but he was working on top over around the shaker and tipple.

Q. Do you remember what the Douthetts did?

A. No, sir, I don't.

1894 Q. They worked there at the mine, did they?

A. There was no one fellow that had any particular job there. They would work one day at one thing and another day at something else.

Q. What time in the day did Douthett and Sylesberry and Baskins leave?

A. They must have left early in the morning.

Q. Had you, up to that time, while you had been there, shipped out any coal?

A. Well, I don't remember whether there had been any coal shipped or not, but I think there had. I am not sure about that. The office department shipped all the coal and billed it and I don't know, I can't answer that question as to whether we shipped any coal or not.

Mr. McDonough: That is all."

Witness excused.

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Mr. Lucas: We offer the testimony of PLEASANT P. BAKER at the former trial, found on page 1775 to page 1779, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, it is incompetent and imma-

terial, and will not throw any light on the contention of
1895 plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

"Q. State your full name? A. Pleasant P. Baker.
Q. Where do you live? A. Hartford.
Q. How long have you lived there? A. Since '99.
Q. What is your business?
A. Hardware business.
Q. Do you remember the night of October 31st, when you took four men from Hartford to Midland in your car?
A. Well, I don't recollect that particular date.
Q. Do you remember of taking four men from Hartford to Midland?
A. I did quite a lot of that; name the particular parties and I can tell you about it.
Q. Do you remember the night of a holdup of the marshal at Hartford? A. Yes, sir.
Q. And do you remember taking four men from Hartford to Midland that night?
1896 A. Yes, sir.
Q. Can you state who those four men were.
A. There was John Champion, Dave Branch, Sandy Robinson and I don't recollect the other man.
Q. Was the other one Earnest Nein?
A. Yes, sir, Earnest Nein is correct.
Q. Who paid you to take them over there?
A. John Champion.
Q. About what time of night was it that you took them over?
A. Well, it was something like eight or nine at night; at any rate, it was before the Slicker comes this way, to come to Ft. Smith.
Q. [Qill] you state what time that Rock Island train leaves Hartford?
A. I think about 6:20, something like that.
Q. Where did you get these men?
A. I picked them up at Hall's livery stable.
Q. About what time? A. It was 7:30, I guess.

Q. And did they state what they wanted to do there, either of these four men tell you where they wanted to go and what they wanted to do?

A. They said they wanted to go to Hartford, but didn't tell their purpose; they asked if I could take a carload over there and I told them I could.

Q. Did they ever tell you what they wanted to catch
1897 at Midland, any train or anything of that kind?

A. No, sir, they didn't say anything about catching a train but wanted to get there before the train ran.

Q. What time did that Slicker leave Midland?

A. It must have been about nine or ten that night.

Q. That was the train coming to Ft. Smith from Midland?

A. Yes, sir.

Q. And you delivered them at the depot at Midland?

A. Yes, sir.

Q. Did they have guns with them?

A. Yes, sir.

Q. Now, on the way back, did you hear any of these four men say something about what had happened or what had not happened at Midland?

A. I heard one of them in the back seat in a conversation say that he was damned proud that he was not there.

Q. Did you hear them discussing things on the trip over or back?

A. I heard them discussing coming back about their union principles and so forth, if they didn't hold them up, there would nobody else, and general conversation like that.

Q. Do you remember who it was that said that he was proud that he was not there?

A. No, I don't recollect which particular one it was.

Q. Did you hear either one of them say whom they expected to find over there?

1898 A. Yes, sir, from the purport of their talk I took it to be John Black.

Q. And do you know who John Black was?

A. Marshal at that time.

Q. United States Marshal? A. Yes, sir.

Q. Do you remember the day of the battle of July 17th?

A. Yes, sir.

Q. Where were you on the 16th of July?

A. You want me to tell you the whole round?

Q. No, just where you were.

A. I was at five or six or seven different places, and I went to Boonville on the day of the 16th.

Q. Were you returning from Ft. Smith to Hartford on the night of the 16th of July?

A. It was on the morning of the 17th that I was returning.

Q. And about what time did you pass through Frogtown going to Hartford?

A. Anywhere from twelve to two o'clock in the morning, I don't know exactly.

Q. What, if anything, occurred as you got near Frogtown going to Hartford?

A. I was held up by an army of men.

Q. Now, state what happened the first time, and then what happened each time that you were held up?

1899 A. Well, as I approached near Frogtown there was some seven or eight, maybe ten, held me up, flagged me down, rather, and I stopped.

Q. What did they say to you?

A. They just talked to me in a general way, asked where I was going, and what I was doing out at that time of night, etc.

Q. Did they tell you anything about what was going to happen?

A. No, they didn't say anything about what was going on.

Q. Did they have guns?

A. No, they didn't have any guns.

Q. Now, where was that,—between Frogtown and Prairie Creek No. 4, or between Hartford and Frogtown?

A. Between Frogtown and No. 4, on the top of the ridge.

Q. Did you leave then and start on again toward Hartford? A. Yes, sir.

Q. What happened to you then?

A. I was held up again by about 15 or 25 men.

Q. Were there any guns in that crowd?

A. Yes, sir.

Q. And did you recognize at least one man in that crowd?

A. I expect I recognized a half dozen of them.

Q. Give the names of any that you remember.

A. Well, there was Sandy Robinson come to the car to me; he was in front, and he flagged me down and came over to the car to me, and he is about the only particular one I can mention.

Q. You say you recognized five or six, were these men

1900 that you knew, did they live in Hartford?

A. Yes, they all lived around, surrounding places.

Q. And what business did you know they were in?

A. Coal mining.

Q. Were they union miners? A. Yes, sir.

Q. Did they say anything to you about a password, or give you a password?

A. They pretended to give me some way to get by, and told me not to get excited over what I might see along the road, and gave me a password to get through.

Q. Did you leave them then and go on toward Hartford again? A. Yes, sir.

Q. What happened then?

A. I was held up again.

Q. By how many men?

A. Anyway from 50 to 150.

Q. Was that in Frogtown?

A. That was at the west outskirts of it.

Q. Was that west toward Hartford?

A. Yes, sir that is out on the road toward Hartford.

Q. Now, describe just how many men were formed there at Frogtown, at the west outskirts of Frogtown, and what they did and said, and who were [—] if any of them?

A. They just seemed to be lined up in the road, marching out that way, or stationed. It was dark to me, and
1901 I couldn't see anything but in the light of the headlight, and they flagged me and I drove up there and stopped, and they were some three or four of them started out and climbed up on the running board and one of them raised my hat up,—it was at night, and he put his face up close to see if he could recognize me, and when he recognized me he stepped down off the car and gave the order to open ranks, and they separated, and I drove on through.

Q. Before he said "Open ranks", were they two abreast?

A. They seemed to be marching on the road two abreast.

Q. Were there some guns in that crowd?

A. Yes, sir, there were supposed to be, I didn't take hold and examine them, but they looked like guns.

Q. Who did you remember seeing in that crowd of from 50 to 150 men?

A. I think Mr. McNamara was the man that raised my hat up, he was on the running board talking to me.

Q. What was his first name? A. James.

Q. Do you know where he worked?

A. No, sir, I don't know where he was working.

Q. Do you know whether that was the same McNamara that was afterwards indicted in this same trouble and went to the penitentiary? A. Yes, sir.

Mr. Hull: You may cross-examine.

Mr. Covington: No questions.

Witness excused.

1902 Mr. Lucas: We offer the testimony of WM. T. WHITE at the former trial, found at page 1383 to page 1391, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your name?
A. William Thomas White.
Q. Where do you live now, Mr. White?
A. At Bache.
Q. Where did you live in 1914?
A. In Montreal.
Q. Do you know how far Montreal is from Prairie Creek Mine No. 4?
A. It is something like five or six miles.
Q. What were you doing? What was your business in the spring of 1914?
A. I had a little coal mine and store.
Q. Right there at Montreal? A. Yes, sir.
Q. Mr. White, I will ask you if you remember being in Hartford, Arkansas, one day when deputy marshal
1903 Holt was in town and of hearing some remarks made about him? A. Yes.
Q. State the circumstances and what was said?
A. I was sitting on the street that runs east and west, on the east side of the street, and marshal Holt came down on that side of the street and crossed over and went back on the east side, and while I was sitting there Will McLachlan came along,—
Q. (Interrupting.) Q. Who was he?
A. Board Member of the mine workers. He came along with two or three men and he said, "Let us get him, boys". Holt was walking on the west side of the street and they was walking on the east side and were looking across the street at him.

Q. Do you know what Holt was doing in town that day?
A. He was summoning witnesses for the injunction suit, I think was his business.
Q. That is the United States Marshal, James Holt?
A. Yes, sir.
Q. Do you remember one night when some employes of Mine No. 4 came to the Montreal station to take the train to Ft. Smith? A. Yes, sir.
Q. State what occurred, and what you saw at that time?
A. They came there and was waiting for the train. I was sitting out on the front porch about 50 or 75 feet from the station, and there was a bunch of fellows sitting near the building across and one said, "There is some of them No. 4 fellows, what are they doing here? I don't know as they have any business here," Then one fellow said, "I don't know whether they have any business here or not."
Q. Did you know anybody in that crowd?
1904 A. Wiley Robinson and Bill Robinson and Charley Evans.
Q. Did you know what Bill Robinson's business was?
A. He was working in the mine.
Q. Was he a union man? A. Yes.
Q. Were the other men with him union men?
A. Yes, sir.
Q. Did you hear Wiley Robinson say anything to the employes?
A. Yes, sir, they went out to them and asked them, could they get on the train there. They seemed to be friends with them, and they told them, no, they could not get on the train, it didn't stop. And they said, "Can you flag it?" And they said, "Sometimes you can flag it, but it would be best to go to the crossing."
Q. Where was the crossing, between Montreal and Ft. Smith?
A. Yes, sir, the crossing was some 200 or 300 yards north of the station. And they talked them into the notion of going down there to the crossing, and they went.
Q. When the train came in did you see Wiley Robinson do anything?
A. Yes, he jumped on the engine when the train stopped at the station.
Q. Did he have some conversation with the engineer?
A. Yes, sir, but I don't know what it was. I suppose,—
Q. (Interrupting.) Never [mond] what you suppose, you cannot tell that. You say the crowd of the employes of the mine went down to the crossing?

A. They went after the train, throwing sticks and rocks.

Q. The employes of the mine, did they go down to the
1905 crossing?

A. Yes, sir, they went down that way.

Q. Did the train stop at the crossing? A. Yes.

Q. What, if anything, did the crowd in which Wiley Robinson was do?

A. They followed after the train and threw rocks and hollered at the men.

Q. Did the employes get on the train?

A. I suppose they did, I didn't see them any more. Someone said they got on the train. The train stopped at the crossing.

Q. Do you remember the date of April 6th, when they had a riot at Mine No. 4? A. Yes.

Q. Did you have some conversation with Bill Robinson that day?

A. He came there in front of my place and said they had been at No. 4 and killed Looper and I said, "If I had been [our] with a crowd and killed anybody, I would keep it to myself."

Q. Did you know who Bill Robinson was?

A. A young fellow that lived in Montreal.

Q. Was he a union miner? A. Yes, sir.

Q. How long had you been in business in Montreal, Mr. White?

A. I had been there about two and one-half years, I think, something like that.

Q. Were you there running a pigeon hole?

A. Yes, sir.

Q. Were you running that under union conditions?

A. Yes, sir, I had a contract with the miners.

Q. Do you know, Mr. White, of any incidents of em-
1906 ployees of Mine No. 4, and so-called scabs coming up to your store and dealing with your wife and daughter and yourself?

A. It was not my daughter, but my cousin.

Q. A woman? A. Yes, sir, a young lady.

Q. Did you know of any instances of their coming up there and acting in any way except as gentlemen?

A. No, sir, they came there in order to get on the train and they would stop in there and get soda pop and tobacco and I never know of them doing or hearing of them doing anything but what was all right.

Q. So far as you know had these scabs intimidated that whole country down there? Do you know of any instances, Mr. White, of the scabs having created any disorder?

A. Not that I know of. They never did in my presence.

Q. Did you, during that same period—during those few months preceding July 17th, 1914, or at some time during that period, receive a letter, a threatening letter? A. Yes, sir.

Q. Have you that letter with you? A. Yes, sir.

Q. Will you state, Mr. White, how you came to get that letter? A. Joe Briggs brought it and gave it to me.

Q. Who was Joe Briggs?

A. A fellow that had been working for me and had been off for a few days for some cause or other, I do not recollect why right now.

Q. Is that J. L. Briggs?

A. Yes, I suppose it is J. L. Briggs.

Q. Do you know whether he had been at times preceding the receipt of this letter, a union miner?

1907 A. No, I don't know that he was at that time. I know afterwards they told me he drew aid from that local at Midland.

Q. Do you know whether previous to that time he had been a union miner?

A. Yes, he had been. I had known him for several years. I don't know whether he was just at that time or not.

Q. That letter is dated April 19th, 1914? A. Yes.

Q. Can you state whether or not you received that letter on or about that date? A. I think it was on the 20th.

Q. Did you keep that letter since that time yourself?

A. Yes.

Q. In your own keeping, was it? A. Yes, sir.

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:

"Q. You say you never heard of scabs doing anything out of the way? When I use the word "scabs" it is because counsel for plaintiffs have spoken of them in that manner in the direct examination." A. No, sir.

Q. You never heard of these non-union men doing anything out of the way?

A. Yes, sir, I have heard of it, but I have never seen it.

Q. Now, so far as you know, they did not create any disturbance or disorder or do anything unseemly?

A. They never did about my place. They came there

1908 to my place frequently and stopped there and got on the train and they was mighty quiet around there.

Q. You could hear talk about them?

A. Yes, sir, I heard talk about them all the time.

Q. Where is this town you live in with reference to Prairie Creek?

A. Two miles north of Midland, about two miles on the Frisco.

Q. You say it is on the Frisco? A. Yes, sir.

Q. Does the Frisco run through Prairie Creek?

A. No, sir.

Q. Does it run through Hartford? A. No, sir.

Q. It runs through Midland?

A. Yes, sir, they have a station at Midland.

Q. And also through your town? A. Yes, sir.

Q. In what direction from Prairie Creek does Midland lie? A. Midland is due north from Prairie Creek.

Q. How far?

A. Something like three or four miles, I don't know just exactly how far.

Q. And your town is on a continuation of the Frisco line?

A. Yes, sir.

Q. How far from Midland? A. About two miles.

Q. How far is Huntington from Prairie Creek?

A. Three or four miles east of Prairie Creek.

Q. What road runs through Huntington?

1909 A. The Frisco.

Q. Does the Midland also run through Huntington?

A. No, sir.

Q. How large is your place? I mean your town?

A. Montreal?

Q. Yes, Montreal?

A. There is something like ten or fifteen families there.

Q. How large is Midland? A. It is just a small place.

Q. Is it a larger village than yours? A. Yes.

Q. How large is Huntington, approximately? Is it a larger village than yours?

A. Yes. Huntington is quite a bit larger than Midland.

Q. Has it 2000 people?

A. I don't know, just what, I suppose there was 1500 or 2000 in Huntington.

Q. How many in Hartford?

A. Well, I don't know, there is more people in Hartford than in Huntington.

Q. Are there 4000 in Hartford?

A. I don't think there is that many, there might be.

Q. Did you ever hear these rumors when you were at Midland about the conduct of the guards during this period, when you happened to be in Midland?

A. Yes, I have heard all kinds of things.

Q. But you never saw anything at Midland? A. No, sir.

Q. Was the rumors you heard with reference to the guards only or with reference to the guards and the non-union men?

A. It was generally all around, it was one just as much
1910 as the other. They had it in for them and they had to say something about them all the time to show there was an enmity between them.

Q. The people in the community circulated the rumors, they had it in for the guards and non-union men?

A. Yes, they had it in for anybody that did not take sides with them. If you sat down and didn't say anything and didn't take sides with either they had it in for you.

Q. Was that feeling pretty general among the citizens of the community? A. Yes, it seemed it was.

Q. And there was a good deal of feeling against you, was there, Mr. White?

A. Yes, it seemed they had it against me because I didn't take sides with them. If you didn't take sides you were against them. That is the way I looked at it.

Q. Did you hear complaints from citizens around there about the guards insulting women and girls? A. No, sir.

Q. Or about shooting up the community?

A. Yes, sir, I heard that, but they never made me believe it.

Q. I am not asking you about the truth of it, but about the rumors you heard? A. Yes, I heard it.

Q. There was a whole lot of excitement about it?

A. No, not any more than about other things.

Q. Was there a good deal of feeling expressed?

A. Yes, sir, there was always an expression of feeling. It was a constant thing.

1911 Q. When you speak of the miners you understand that they have a local union and a district organization; you know that? A. Yes.

Q. When you speak of McLachlan as a board member, do you mean a member of the national organization or of District 21? A. Of District 21.

Q. Will McLachlan, is it? A. Yes, sir.

Q. Where was it that you heard him make this expression with reference to this marshal Holt "let's get him"?

A. It was on the street at Hartford, somewhere along about West's drug store. I don't know just the place.

Q. That was in Hartford, was it? A. Yes, sir.

Q. Will you tell us the time as near as you can when that happened? A. No, sir, I don't remember the day.

Q. Was it in April, you think?

A. I think it was. I know Holt summoned Slankard to the court. He found Slankard up in front of the bank. I was watching them.

Q. Was it McLachlan or someone else that said "Let's get him"? A. McLachlan.

Q. Did they follow the marshal?

A. The marshal was on the west side of the street and they were on the east side, across the street looking at the marshal.

Q. Did you hear anything else said on that occasion?

A. No, sir. They passed along by me. I was sitting down.

Q. Sitting down on your porch?

A. No, sir, I was sitting down—

Q. (Interrupting) In a chair?

1912 A. No, on a door step, or something like that, I don't remember just what it was.

Q. Had you heard anything said before that remark was made? A. No, sir.

Q. Or did you hear anything said after that?

A. No, sir.

Q. That is all you heard? A. Yes, sir.

Q. And Holt was on the other side of the street and McLachlan and the men with him were on the side you were sitting on? A. Yes, sir.

Q. Were there other people on the street? A. Yes, sir.

Q. How wide is that street?

A. I suppose fifty feet wide.

Q. How many people were on the street, at that time, across on the other side? A. I don't know how many.

Mr. Warrum: That is all."

Redirect Examination

By Mr. Hull:

Q. Mr. White, you have been asked about complaints you heard about the conduct of the guards. Did you hear any complaints or did you have any complaints against the union men? A. No, sir, I didn't have any.

Q. Didn't you have any trouble with the union men at that time, during that period? In the conduct of your mine, Mr. White, were you interfered with at all?

A. Yes, sir, they would stop me and then I would start and they would stop me again and the men would

1913 work a few days and then lay off a few days. It seems that they were confused or didn't know what to do or didn't want to do.

Q. Within the last few days, Mr. White, did someone speak to you at Bache, Arkansas? A. Yes, sir.
Q. About your coming here to testify? A. Yes, sir.
Q. Who was that man? A. Charlie Hart.
Q. Do you know whether he is a union man? A. Yes, sir.
Q. What did he say to you?
A. He said I didn't have to recollect these things I heard.
Q. What did you say to him?
A. I told him that I was not that forgetful, or something like that, that I would forget everything I ever heard.
Q. Did he know you were subpoenaed to be a witness in this case? A. Yes, sir.

Mr. Hull: That is all.

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Mr. Lucas: We offer the testimony of FRED FRANCES at the former trial, found on page 1545 to page 1550, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the
1914 evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. State your name. A. Fred Francis.
Q. How old are you?
A. Well, sir, if I have my age, right I was 26 years old the 6th of last July.
Q. Do you remember the day of the big battle at No. 4?
A. Yes, sir.
Q. The night before that were you there? A. Yes, sir.
Q. State what you saw there that night when you were there, what did you see?
A. Well, I didn't see nothing there but a bunch of men out there and a few guns.
Q. How many men did you see at Frogtown?
A. Oh, it looked to me like it was several hundred, but I didn't count them.

Q. Did you testify in the contempt case here? A. Sir?
Q. Did you testify in the contempt case here? In this court room? A. Yes, sir.
Q. Did you say that at that time, that there was a thousand men there?
A. Well there must have been, there was a good many of them.
Q. What did you hear the men saying they were going to do?
1915 A. They were talking about going over there and getting them out of that place.
Q. What place was that? A. No. 4.
Q. On the 17th—the next day, what did you hear and see?
A. I heard right smart shooting, and I went over there and I seen a few men scattered around there and there was a couple or two or three men going up to a cabin where the men was, and I went up with them.
Q. What did you see at the log cabin?
A. I seen the men they had captured.
Q. What happened?
A. I just walked up there and peeped into the cabin and turned around and started to walk away and a man said "come out boy, and go with me" and I stopped, and they just walked out from around the corner of the house and someone went to shooting and I stepped back and looked back, and two men were laying stretched out dead.

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:
"Q. Were you working at No. 4, Mr. Francis?
A. No, sir.
Q. What were you doing? A. Sir?
Q. What were you doing over in that country?
A. I was over there just prowling around, like other kids would. I didn't have no better sense.
Q. Do you mean prowling around No. 4?
A. I was just over there where the bunch was.
1916 Q. What bunch? A. The bunch of men.
Q. Where did you live then?
A. I lived at Huntington. I didn't live just exactly in Huntington, but two miles west of Huntington at No. 3 camp.
Q. You lived at No. 3 camp? A. Yes, sir.
Q. Where is No. 3 camp located with reference to No. 4 tipple, where this trouble was alleged to have occured?
A. It is kind of northeast a little bit.

Q. How far?
A. Well, I don't know—about five or six miles I guess.
Q. When did you leave home that day, what time?
A. I never noticed what time it was.
Q. Well, about what time was it?
A. It was along in the morning about—well, it was after 8:00 o'clock I guess.
Q. Where did you go?
A. Well, I went over that way—over to No. 4 camp
Q. Did you stop on the road?
A. Well, yes, I stopped along.
Q. Did you go down to No. 4?
A. No, sir, I never went down to the mines at all.
Q. You did go into No. 3?
A. No, No. 4 camp.
Q. You went into No. 4 camp? A. Yes.
Q. Then where did you go from there?
A. I went from there over to that log cabin and from there I went back home.
1917 Q. I am talking about the day of the night you say you saw the crowd gathered at Frogtown? What time did you leave home that day?
A. I am talking about the day the fight came off. You are talking about the night before the fight?
Q. Yes, where were you the day before the fight the next morning? Were you at home the day before?
A. Yes, sir.
Q. Did you stay home all day?
A. I don't know whether I was home all day or not. I was down at No. 6 camp when a fellow came along and I went over there with him.
Q. What was the fellow?
A. Paul Allman.
Q. Did he live in that community?
A. Yes, he lived right there (there) in No. 3 camp.
Q. Where did you and Allman go to?
A. We went to No. 4 [Campe]—not No. 4 camp, but Frogtown.
Q. Who did you see in Frogtown that day?
A. I didn't see no one I knowed. Just them men I seen over there.
Q. Did you stop there?
A. Yes, sir, we stopped there about an hour or so.
Q. What were you doing while you were there?
A. I wasn't doing nothing. I was setting at the side of the road talking to the fellow I went over there with.

Q. You just went to the side of the road and had a conversation between yourselves, did you?
A. Yes, sir.
Q. And you remained there about an hour?
A. Yes.
1918 Q. You did not get out of the buggy?
A. We were not in a buggy.
Q. How did you go? A. Afoot.
Q. And you were down at the side of the road? A. Yes.
Q. Where did you go after you left that particular place?
A. I went right back home.
Q. You went right back home?
A. Yes, sir.
Q. What did you go over to Frogtown for?
A. This fellow came along and wanted to go over there with him, and I walked over there with him. I met him in No. 6 Central Camp.
Q. What business had he?
A. That is something I don't know, I can't tell you nothing about his business, what his business was that he had over there.
Q. You don't know?
A. No. I don't know nothing at all about him.
Q. Were you then preparing for the fight the next day?
A. Who?
Q. You.
A. No, I never prepared for nothing.
Q. You didn't? A. No, sir.
Q. When you left there where did you go?
A. Left Frogtown.
Q. When you left Frogtown where did you go?
A. I went home. I told you awhile ago I went to Frog-
1919 town.
Q. What time in the afternoon was it you left there?
A. After dark, I don't know what time it was. It was after dark when we got over there.
Q. It was after dark when you got there?
A. Yes, sir.
Q. Where was this gathering taking place?
A. There in Frogtown.
Q. Well now, where is Frogtown?
A. Down at the lower end where the road turns to go to Hartford.
Q. Down on the turn then? A. Yes, sir.
Q. Did you know anyone in Frogtown?
A. No, sir, I don't know no one there.
Q. You met no one you knew there?

A. No, sir, I didn't know a soul over there except the boy I went over there with.
Q. Did he meet anyone with whom he was acquainted?
A. I don't know whether he did or not.
Q. Did he call anyone by their names?
A. If he did I didn't hear him.
Q. Did you go in any houses there?
A. No, sir.
Q. You just walked over there and sat down.
A. Yes.
Q. And sat and talked an hour between yourselves and went away? A. Yes, sir.
Q. What time did you return home?
A. It was about 9:00 I guess, or later maybe.
Q. How far is it from Frogtown to your home?
A. Well, about five or six miles.
1920 Q. Five or six miles?
A. Yes, sir.
Q. About what time was it when you left Frogtown to go to your home?
A. Well, I never looked to see.
Q. Then you remained at home during that night?
A. Yes, sir.
Q. What time did you leave home the next day?
A. Well, it was about 8:00 o'clock I guess or maybe a little after.
Q. Where did you go?
A. I went back over there to No. 4 camp.
Q. How close is your home to No. 4?
A. Well, about four and one-half miles, I guess.
Q. What did you go over there for?
A. I just went over there because I didn't have any place else to go.
Q. You had your gun with you didn't you?
A. No, I didn't have no gun with me.
Q. Who went with you?
A. There didn't no one go with me there.
Q. Where did you meet some one?
A. I didn't meet no one until I got over to No. 4 camp.
Q. Who did you meet there?
A. I just met a bunch of men.
Q. Did you know any of them?
A. No, sir.
Q. You didn't know any of them?
A. No, sir.

Q. Were you raised in that country?
1921 A. No, sir, I ain't been raised there.
Q. How long have you lived there?
A. I lived in Huntington about five years I guess.
Q. Five years? A. Yes, sir.
Q. Have you been in Huntington all the time?
A. No, sir.
Q. Have you been away from there?
A. I have been in and out.
Q. How much time have you been out?
A. Just about as much time as I have been there—about half of the time.
Q. What states did you visit?
A. Well, Illinois and Missouri and Kansas, and around up in there.
Q. What is your occupation?
A. Well, coal miner mostly.
Q. What local do you belong to?
A. I have the number in my pocket right here (witness takes card out of his pocket and looks at same). 613.
Q. Who is secretary of your local?
A. Walter Airwood.
Q. Do you belong to it up to this particular time?
A. Yes, sir.
Q. What mine were you working at? A. Now?
Q. No, at that time?
A. Wasn't working then. I was crippled up at the time that battle came off. I got crippled at No. 3 Central at
1922 Huntington.
Q. And you did not have any gun that day at all?
A. No, sir.
Q. Did you do any shooting after you got there with anybody else's gun?
A. No, sir, I never done no shooting.
Q. Did you do any shooting at that little house where the men were murdered? A. No, sir.
Q. You didn't do any shooting?
A. No, sir, didn't have anything to shoot with.

Mr. Covington. That is all.

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Mr. Lucas: We offer the testimony of S. T. Brown at the former trial, found on page 1699 to page 1701 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record

on the ground that the witness is living within the jurisdiction of the court: but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Give your full name?
A. S. T. Brown.
Q. Where do you live?
A. I am living at the present time about 35 miles from Coal. Q. Coal?
1923 A. Yes, Coal or Cove.
Q. Is that in this state?
A. No, sir, in Oklahoma.
Q. What is your occupation at the present time?
A. At the present time I am farming.
Q. You lived at Prairie Creek in 1914?
A. Yes, sir, I did.
Q. Early on the morning of July 17th, state what occurred, to your knowledge?
A. The only thing I heard, the first I heard was a lot of shooting.
Q. About what time was that?
A. I taken it to be between 4:00 and 4:30.
Q. Where were you living at that ime, how far from No. 4?
A. I was living a little better than a quarter of a mile, right down close to a little mine called the O. Looper mine or pit.
Q. Who was running that?
A. My brother-in-law was fixing to run it then.
Q. Who is he? A. Mack Weston.
Q. Where does he live now? A. At Drumlet.
Q. Is that near Arlington? A. Yes.
Q. In the morning did some man come to you and give you some advice, during the morning of the battle?
A. I will say it was ten o'clock, probably a little later than, and some men came around the edge of the hill, I don't know how many, but something like 20—

1924 Q. (interrupting) Did they have guns?

A. A few of them had guns, part of them didn't. And they just made the remark to me, they said, "Brown, get them women folks and horses and get up the hollow, we are going to close in on them."

Q. Did you hear an explosion that morning?

A. I believe not.

Q. Did you see any houses burning?

A. Nothing only No. 4 about twelve o'clock. I saw the tipple when it fell in, I and my brother-in-law and the boys.

Q. You say that was about twelve o'clock?

A. Yes, 12:00 or 12:30 or something like that.

Q. Had you just previous to that seen four men leave the mine?

A. Just before we walked around to see the tipple fall in Pat Molloy and three other men came up from camp and asked for a drink of water and I said, "Help yourself, boys, there is plenty of it," and they took a drink of water, and my wife, no, my sister, it was, asked them if they would have something to eat, and they said "No, we will get up the line," and I think my sister gave them some biscuits and they took them in their hands and walked on,—I am not quite sure about that, but I think that is it.

My brother-in-law asked how many boys were left up there and Pat Molloy made the remark, "We are the last four".

Q. How long after that was it you saw No. 4 in smoke?

A. Well, I will say it was something like an hour, We just finished up our dinner and got up and walked around there and about the time we got around there we just got around far enough to see it begin to fall in.

Mr. Hull: That is all.

Witness excused.

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1925 Mr. Lucas: We offer the testimony of LEE ROGERS at the former trial, found on page 1641 to page 1643, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court, but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [sitness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial,

and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. State your name. A. Lee Rogers.
Q. Where do you live?
A. I live at Hartman, Arkansas.
Q. Where were you living in 1914? A. At Hartman.
Q. Did you on or about July 13th, 1914, start to work at Prairie Creek? A. I started up there to work.
Q. You started up there to work? A. Yes.
Q. Where did you take the train? A. At Hartman.
Q. Did you come to Ft. Smith? A. Yes.
Q. And then did you take a train from Ft. Smith to Prairie Creek?
1926 Yes, sir.
Q. Do you remember the time of the big battle down there.
A. I remember the day, but I was not there.
Q. You were not there? A. No.
Q. How many days before that did this occur?
A. Well, I was there Monday, and this occurred on Friday. I was there on Monday, or I went by there.
Q. State what occurred on that train from Ft. Smith to Prairie Creek?
A. Well, we got on the train and there was some men on there said we were going to Prairie Creek and a man said it would not be safe for us to go.
Q. Do you know one of those men?
A. I did not know him at the time; I found out his name.
Q. What was his name? A. August Smith.
Q. What did he say to you?
A. He said it would not be good for us to go out there.
Q. Did he say why?
A. Well, he didn't particularly say why. He said it would not be good for us to go out there, that we were likely to be killed.
Q. How many employes were there going down to the mine on that train with you? A. There were seven of us.
Q. Seven of you? A. Yes.
Q. Did anything else occur after the train left Greenwood?
A. Well, there was a good many of them got on there, and he said there were seven scabs on there.

1927 Q. Who was that, this August Smith?
A. Yes, August Smith, but he told them not to bother anybody.
Q. But he pointed out the seven scabs? A. Yes.
Q. Did you get off when the train got to the mine?
A. No, sir.
Q. Did anybody get off?
A. Bob Morris got off.
Q. What did the rest do?
A. Went on to Hartford.
Q. Why didn't you get off there?
A. They crowded up in the door so we couldn't get off.
Q. Did Sam Smith go on to Hartford with you?
A. Yes.
Q. He was one of the employes? A. Yes.
Q. Did you hear some conversations between Sam Smith and some of the men in Hartford that night? A. Yes.
Q. What did they say?
A. They said they would give him his bed and breakfast but to leave and not come back any more.
Q. Did he leave that night? A. Yes.
Q. What time did he leave? A. I don't know.
Q. What did the rest of you do?
A. Stayed until the next evening at six o'clock.
Q. Then what did you do?
A. We came to Mansfield, we walked to Mansfield.

That is all.

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1928 Mr. Lucas: We offer the testimony of H. O. Lewis at the former trial, found on page 1860 to page 1863, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction of evidence of any of this testimony and extracts from the former record of the [sitness] named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. What is your name? A. H. O. Lewis.
Q. What is your business? A. Mining engineer.
Q. Have you been employed as a mining engineer and doing also some civil engineering for the Bache-Denman Coal Company? A. Yes, sir.
Q. During how many [hears]? A. Since 1906.
Q. How long have you practiced that profession?
A. Since 1898.
Q. Did you, at the request of the plaintiffs in this case, prepare, or have prepared under your direction and according to your own surveys, a relief map of the Prairie Creek Mine No. 4 and its vicinity? A. Yes, sir.
1929 Q. Is this the relief map referred to? A. Yes, sir.

Mr. Hull: We might have this marked by the reporter plaintiff's Exhibit 61.

(The [(maper)] referred to was marked by the reporter 2762 "Plaintiff's Exhibit 62, J. K. P." "

Q. Referring to plaintiffs' Exhibit 61, J. K. P., the relief map, vicinity of Prairie Creek, Sebastian County, Arkansas, scale vertical, one inch, thirty feet; horozontal one inch, one hundred feet; this map was prepared by you or under your directions?
A. Part of it personally, and one of my [assistance], we worked about equal time.
Q. And you have checked this map with surveys?
A. We made a special survey for it, and used other surveys.
Q. Will you come over to the map and describe, standing there at the left for a moment,—will you describe where No. 4 Prairie Creek mine is? A. This is No. 4 (indicating).
Q. Now, you will please talk up.
A. This is No. 4 Prairie Creek (indicating).
Q. Will you point out the tipple at No. 4.
A. This represents the tipple (indicating).
Q. Will you describe what those two little buildings just directly underneath the dirt dump are? A. Here?
Q. Yes? A. It is the bunk houses.
Q. Will you show where the school house is?
A. (Witness indicates.)
1930 Q. Will you state approximately how far that school houes is from Mine No. 4?
A. If I had a rule, I could tell you exactly.
Q. Here is one? A. About 1600 feet.
Q. Will you point out on that map the road to Huntington?
A. This road over here (indicating).

Q. From your knowledge of that country and the surrounding country, in what direction from that map would Huntington be? A. Out in this direction (indicating).

Q. Off up over the upper left hand corner of the map?

A. Yes, sir.

Q. Do you know about how far Huntington was from Mine No. 4?

A. I can't tell you offhand, but I think about two miles, or possibly more.

Q. Will you indicate in which direction from Mine No. 4 the town of Midland is?

A. Midland is down in this direction (indicating).

Q. And how far from the school house?

A. Three and a half to four miles, offhand.

Q. Will you show where the fan house was?

A. Of No. 4, the No. 4 fan house?

Q. Yes, No. 4 fan house? A. Here (indicating).

Q. Is that what is sometimes called Goo Goo, or Goo Goo Eyes? A. Yes, sir.

Q. Where was No. 3 camp?

A. Here (indicating).

Q. And those are the houses in No. 3 camp?

1931 A. Yes, sir.

Q. Where is what was known as the deck house?

A. I don't know.

Q. You don't know where the deck house was?

A. No, sir.

Q Now, point to Mine 3?

A. (Witness indicates.)

Q. About how far was Mine 3 from Mine 4?

A. 2700 feet, very close.

Q. That is roughly about a half a mile?

A. A little over.

Q. Do you know where No. 3 slope connected with No. 4, under ground?

A. I don't know, but I can give it to you approximately, I would say pretty close to there (indicating).

Q. No. 3 slope,—

A. Come down about there, and connected,—

Q. (Interrupting.) With an entry at No. 4 mine?

A. Yes, sir.

Q. Going back for a moment to No. 4, will you point out where that so called wire rope was, that wire cable that was stretched there on April 6th?

A. One cable across this point, and one across this one (indicating).

Q. And those cables connected with two fences, did they not? A. Yes, sir.
Q. Point out the fences, just trace them with your pencil.
A. (Witness indicates.)
Q. So that the wire ropes and fences just enclosed Mine 4?
A. Yes, sir.
1932 Q. Will you point out the town of Prairie Creek?
A. Here (indicating).
Q. About how far from No. 4 was the town of Prairie Creek? A. Two thousand feet.
Q. Do you know where John Bumpas' is or was?
A. No, sir, I don't.
Q. Now, will you follow, beginning at the school house, the road that went to Hartford?
A. The road here and up here and coming around (indicating).
Q. Now, between Mine 4 and Frogtown, was there some elevation? A. Yes, sir.
Q. Will you indicate it on the map?
A. Here (indicating).
Q. About how high was that hill or ridge?
A. From No. 4.
Q. From a level with No. 4 and the level of Frogtown, what was the elevation there between the two?
A. I can just approximate that.
Q. Will you do that? A. Nearly 200 feet.
Q. Will you point out Mammoth Vein Mine No. 1?
A. Here (indicating).
Q. Now, were there two tipples at No. 1?
A. Yes, sir.
Q. What were they called?
A. Called Rock Island tipple and Midland Valley tipple.
Q. Will you point out the Rock Island tipple?
A. Yes, sir (indicating).
Q. And the Midland tipple?
A. Here (indicating).
1933 Q. What is this mine right over here in the right hand corner?
A. The Hoffman mine, later operated by the Central Coal & Coke Company.
Q. How far is Hartford, if you know, from Mine No. 4?
A. I would say about three miles; I may be a little off on that.
Q. How far is it from Mine 4 to Frogtown?
A. 6700 feet, which would be a mile and a quarter.

Q. Will you point out the Prairie Creek station on the Midland Valley Railroad? That was right in the village of Prairie Creek? A. Yes, sir.

Q. Where is what was known as the switch or crossing, the mine crossing? A. I don't know.

Q. You don't know it by that name. Where did the main switch go off of the Midland Valley Railroad?

A. Down here four or five hundred feet from this point, (indicating).

Q. Will you point out the office at Mine No. 4? Was that just inside of the enclosure? A. Yes, sir.

Witness excused.

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Mr. Lucas: We offer the testimony of FRANK PIGG at the former trial, found on page 1932 to page 1934, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the [sitness] named for the reason that under the ruling of the Supreme Court the
1934 evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. State your full name.
A. Frank Pigg.
Q. What is your occupation?
A. Conductor on the Midland Valley.
Q. Were you conductor on the Midland Valley in 1914?
A. Yes.
Q. In July? A. Yes.
Q. Was it your business to switch cars in and out of Mine No. 4 at Prairie Creek? A. Yes, sir.
Q. Do you remember the day of the big battle down there July 17th, 1914? A. Yes, sir.
Q. Did you go there during the afternoon of that day and find cars burning at No. 4?
A. Yes, sir, I guess I went in the mine somewhere about three o'clock.

Q. Had you received any orders from your company that morning to go in and switch a car out?

A. No, sir.

Q. How did you happen to go down there?

A. It was on a run we always made down there,—we always had a run down there and we worked that branch in the afternoon.

1935

Q. What did you find when you got there that afternoon?

A. The tipple was burning.

Q. With relation to burning cars, what did you see?

A. The tipple was practically all fell in when we got there and the cars, I believe there were nine or ten cars destroyed at No. 4 Prairie Creek, and there was two or three destroyed at Mammoth Vein No. 1. We always called it the Denman Mine.

Q. Speaking of No. 4, where were the burning cars?

A. There was one car standing right on the scales, that was a loaded car that was burned, and there was a loaded car burned on the team track to the left of the scales, and a loaded car burned just above the scales between the scales and the tipple. And the other cars were empty.

Q. How many loaded cars were burned?

A. Three loaded cars.

Q. Now, with reference to this loaded car burned on the scales, what [was] condition was that in when you arrived?

A. It was practically all burned up, it was ready to fall down on the truck.

Q. Was it possible for you to take the number of that car?

A. Yes, sir.

Q. Was it possible or impossible?

A. It was impossible for me to get it because the numbers [was] all destroyed. You could not tell about it.

Q. The number had been burned off of the car when you got there? A. Yes.

Q. Will you state the custom with reference to taking out cars, when they were loaded and weighed, where would they be placed?

A. Either on the scales or just below the scales, they weighed them at the scales and they would always drop them off of the scales.

1936

Q. There was an incline from the tipple to the scales?

A. Yes. The way the track was they had to go around on the right hand, on the scale track, and shove the empties up the incline to drop down to the tipple. And after they were loaded they dropped down from the tipple to the scales, and then down to where we could get hold of them.

Q. There was another incline down to drop them off of the scales? A. Yes.

Q. And [what] was so arranged that it could be done without power? A. Yes.

Q. State whether or not there was any loaded coal car there burning or not burning, when you got there?

A. No, sir, there was a clear track from the scales to the main line.

Q. So the car on the scales that was burning was the first loaded car? A. Yes.

Q. And would have been the first one taken out by you?

A. Yes.

Q. Had you taken out any car on the 16th of July, the day before?

A. I had taken out a couple of cars a day or so before that, it must been about the 14th.

Q. After that time, you had not taken out any cars?

A. No, sir.

Q. State whether or not any car, after it was weighed,
1937 was ever shoved back up the incline toward the tipple?

A. No.

Q. When you took it, it was always on the scale or below the scales? A. Yes, sir.

Witness excused.

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Mr. Lucas: We offer the testimony of EDWARD J. N. PEAKE at the former trial, found on page 2039 to 2041, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. What is your full name?

A. Edward J. M. Peake.

Q. What is your present occupation.

A. In charge of freight claims for the Midland Valley Railroad.

Q. With headquarters at Muskogee?

A. Yes, sir.

Q. I hand you Plaintiffs Exhibit 113, and will ask you if you have produced that from the files of the Midland Valley Railroad Company, under custody and control, cov-

1938 ering Midland Valley Car 160, on July 16th, 1914?

A. Yes, sir.

Q. Taken from the records of the Midland Valley under your control and custody? A. I did.

Q. Do you know the signatures of the agent, R. B. Cartlew? A. Yes, sir.

Q. And was he agent of the Midland Valley at Midland at that time? A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Mr. Hull: I have agreed with the witness that if he will leave this original here until tomorrow or next day that a copy will be substituted, inasmuch as this original is part of an insurance claim which has not been settled.

The Court: It may be done, by substituting a certified copy with the clerk.

Cross-Examination

Mr. Covington:

"Q. What is your name?

A. Edward J. M. Peake.

Q. What official position do you hold?

A. In charge of freight claims.

Q. Were you in the same department last year?

A. In the freight claim department,—sir?

Q. How long have you been in that department?

A. Three and a half years, about.

Q. When did you find this bill that you have present-

1939 ed here, this exhibit?

A. I found it yesterday when the inquiry came; it has been in my custody all the time since it has been in there

Q. This is one of the cars that was involved in a suit that was tried at Muskogee, the Midland Railroad Company against the insurance company for claim on this car?

A. It was a claim filed against us.

Q. A claim filed against you?

A. Yes, sir.

Q. Who filed the claim against you?

A. The holders of the bill of lading.

Q. But the car that was destroyed, you had a claim against the insurance company for the car, did you?

A. I know nothing about the insurance, that was handled by our legal department.

Q. They didn't know where you were when they tried that case, did they?

A. I assume that they did, but I cannot speak of their intention and their knowledge; all I know is I have the bill of lading, and have had it in my custody.

Q. Where did you get it?

A. From my files.

Q. When were your files got up?

A. At the time we got that bill of lading, that claim number is stamped on it.

Q. Made by your agent at Midland?

A. I cannot say as to that, I would have to consult my files.

Q. Was this stuff shipped f. o. b.?

A. I know nothing about that; it is a shippers order bill of lading.

1940 Q. Bill of lading attached? A. We don't attach it.

Q. I am trying to get at how this found its way into your possession?

A. Why, it is not infrequent. I get them frequently, sometime when diversion is asked, and sometimes a bill of lading is not accomplished by the delivery of the freight, and on surrendering the bill of lading we are asked to satisfy it.

Q. What did this particular car contain? Where was it shipped from and to where?

A. The bill of lading shows.

Q. Now, it it not a fact that this was one of the cars that you claim damages for against the insurance company, and you couldn't identify the car, or it had been lost, and had to be eliminated on that account?

A. I know nothing about it at all; I know I had that bill of lading, and have had it in my possession.

Redirect Examination

By Mr. Hull:

Q. And this bill of lading represents a car on which delivery was not accomplished?

A. Presumably so, because we could not make delivery without taking up the bill of lading, the delivering agent taking up the bill of lading.

Witness excused.

1941 Mr. Lucas: I will continue the offer but not under the stipulation of the defendant witnesses who testified at the previous trial. These witnesses are now dead or out of the jurisdiction. I first offer the testimony of BOB BLY found on pages 1171 to 1176 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is competent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination.

"Q. State your full name. A. Bob Bly.
Q. Are you a native of this part of the country?
A. Yes, sir.
Q. How long have you lived here?
A. Something like thirteen years.
Q. What is your business? A. A coal digger.
Q. Where are you working now?
1942 A. At Jamestown.
Q. How long have you worked at Jamestown?
A. Something like six years.
Q. Did you in April or May of 1914 go to work for the Bache-Denman Coal Company? A. Yes, sir.
Q. At Prairie Creek No. 4? A. Yes, sir.
Q. What was your business? What were you to do at that time?
A. Well, I first done rough work around there, cleaned up, and they put me to guarding.
Q. Did you guard in the day time or in the night time?
A. At night.
Q. How long were you there before you went home on account of sickness? A. Oh, something like three weeks.
Q. Then, did you go back there in July?
A. Yes, sir, right at the last of June or the first of July.
Q. Do you remember the time of the big battle down there, what is called the battle of July 17th?

A. No, sir, I was at home.
Q. You remember that time?
A. Yes, I remember that time.
Q. State what occurred three or four days before that battle with reference to someone coming and seeing you at the mine?
A. Jim Meeks, and Arthur Cooper came and called me out.
Q. From where?
1943 A. From the bunk where I was asleep.
Q. Who were those men?
A. Jim Meeks and Arthur Cooper.
Q. Were they some relation of yours?
A. Yes, sir, brothers-in-law. I married a Cooper and Jim Meeks married a Cooper.
Q. Were they union men? A. Yes.
Q. Where did they work?
A. I don't know where Arthur worked, but Jim Meeks worked in ....., Oklahoma.
Q. Well, they called you out of the mines, where did you go?
A. I went out of the mines, something like 200 yards out south.
Q. What did they say to you?
A. They came to tell me they were looking for trouble most any time,—right away.
Q. What else did they say to you? (Objected to)
Q. Did they say anything else to you about what was going to happen there?
A. No, nothing more than they said there would be trouble and for me to go home.
Q. What did they say you could look for? (Objected to)
Q. As a result of what was said to you by Jim Meeks and Arthur Cooper what did you do? A. I went home.
Q. And how long before the battle was that?
A. Well, I could not tell. That was some,—I guess—
1944 five or six days.

Cross-Examination.

Q. When did you go to Prairie Creek, Mr. Bly?
A. Sometime in April.
Q. In April? A. Yes, sir.
Q. The latter part of April?
A. Yes, sir, somewheres along about then, I could not tell you just when it was, I don't recall the date.
Q. You had been working at Jamestown, Johnson County, Arkansas? A. Yes, sir.

Q. How far is that from the coal field of Spadra?
A. It is about thre miles, I guess.
Q. On the same line of railroad?
A. Yes, sir on the Iron Mountain.
Q. Is it a union or non-union mine?
A. It was non-union.
Q. Operated by the Pennsylvania Mining Company?
A. Yes, sir.
Q. How long had you worked at that non-union mine?
A. Something like six years, or maybe a little over.
Q. They had been running there for six years?
A. Yes, sir. I worked at it about that long. They hadn't at that time.
Q. They had been working there with non-union labor for six years, hadn't they, Bob?
A. Yes, they now have gone on the union basis
1945 Q. But they have now gone on the union basis?
A. Yes.
Q. And you are now working union? A. Yes, sir.
Q. The non-union men struck down there and organized themselves, didn't they? A. Well, I could not tell.
Q. You were there, weren't you?
A. Yes, sir, I lived there.
Q. That is a fact, isn't it?
A. Which?
Q. That the men in their employ came out on strike claiming they were taking about half of the coal they dug by running it over the screen?
A. I quit along there about that time. They were running over the screen.
Q. You quit because they would not pay you?
A. Yes.
Q. Did you have a gun when you went down to Prairie Creek? A. Yes, sir.
Q. Who furnished it to you? A. The company.
Q. Who? A. The company.
Q. The company? A. Yes, sir.
Q. Who hired you to go down there?
1946 A. John Trigg.
Q. Who? A. John Trigg.
Q. He is a brother-in-law of Franklin Bache, isn't he?
A. Well, I could not tell.
Q. This man Meeks you referred to, he was an employe of the Pennsylvania Mining Company for a long period of time?
A. Yes, sir.

Q. And had only left its employ a few days before he came over to Prairie Creek to advise you about the situation there, isn't that true?

A. Well, I don't understand it the way you speak.

Q. I say, he was a non-union miner, Meeks was; this man Meeks you referred to? A. Well, I don't know.

Q. He was a brother-in-law of yours, wasn't he?

A. Yes, sir, but I had not seen him for a right smart time. You mean Prairie Creek?

Q. No, down there?

A. Yes, he was non-union, a non-union man down there.

Q. And he had not been away from here but a little while when you had this conversation with him?

A. No, sir, he had not been away long, as well as I recollect.

Q. Who was the other man? A. Arthur Cooper.

Q. Was he from the Pennsylvania Mining Company, too?

A. No, sir, he was from Oklahoma,—Gowan.

1947 Q. What was the capacity of the Pennsylvania Mining Company? I mean the production?

(Objection.)

Re-direct Examination.

Q. What is your first name?

A. Bob.

Q. You have known Senator Covington for some time?

A. Yes, sir."

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Mr. Lucas: We offer the testimony of W. P. Upton, found on pages 1176 to 1180.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court: but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination.

"Q. What is your full name?

A. Well, my initials is W. P. Some calls me Will, some William, and some Bill, first one thing and then another, William you might say my name is.

1948 Q. What is your occupation? A. Farming.

Q. Have you been a farmer practically all of your life?

A. Yes, sir, all except eight years of my life I farmed. I farmed all my life except eight years that I mined.

Q. When did you do that mining?

A. Well, several years ago.

Q. In July, 1914, were you working for the Bache-Denman Coal Company?

A. Yes, sir, I worked some for them, yes, sir.

Q. You left there, I believe, after you had been there a few days on account of sickness? A. Yes, sir.

Q. I just want to place that date. On your way back, do you remember what day of the month or week it was you went back to the mine in July?

A. I believe it was on Monday, I am not sure, but I believe it was on Monday.

Q. How long before what we call the battle of July 17th was that?

A. To the best of my recollection it must have been about four days, or something like that.

Q. If the battle was on Friday and this Monday, it was the Monday preceding the battle?

A. Yes, sir, I think that is right.

Q. You went down there on the train from Ft. Smith?

A. Yes, sir.

1949 Q. State what occurred on that train?

A. Well, about the first thing that occurred was down here at the depot there was a man came to me and I reckon he must have seen me buy my ticket and where to, and he asked me where I was going and I told him.

Q. Did you know his name?

A. No, sir, but I heard another man tell his name.

Q. You cannot tell what any other man told you.

A. There was another fellow,—

Q. (Interrupting). State what he said to you.

A. Well, he said, "My friend, I advise you,—(Objection).

Q. What did this man say to you?

A. He asked me where I was going, and I told him, and he said, "My friend, I would advise you to stay away from there. There is trouble there." He says, to the best of my recollection, "It is just a few days before we are going to

clean that place." And by some means or other he found I was an Odd Fellow and an A. O. U. W. and he said, "Brothers, if you are there when we undertake this job you are as liable to get hurt as anybody and we don't want to hurt you, and I advise you to stay away." I believe that is all what he said.

Q. At Greenwood do you remember anybody getting on the train there or not? A. Yes, sir, quite a bunch got on there.

Q. What occurred after the train left Greenwood, if anything?

A. Several of them came to me and one or two sat down, one sat in the seat with me, and one sat on the arm
1950 of the seat, and asked me where I was going and I told them and they commenced then advising me to stay away and made about the same remark the other fellow had made. They said, "We don't want to hurt you, and if you are there when we strike this job, we are as likely to kill you as anybody, and we don't want to do that. Don't get off this train at that station."

Q. Where were you going to get off?

A. I was going to get off at a switch, I believe it was right this side of the mine.

Q. You had been engaged to go to work at the mine?

A. Yes, sir.

Q. How many other employes were going down on that train at the same time? A. With me?

Q. Yes? A. Five of us.

Q. What had you been engaged to do?

A. I was employed there as a kind of top boss, at the night, to see that the fireman kept steam and the engineerman hoisted water into the water box.

Q. Did you get off at the mine that night?

A. No, sir, I did not.

Q. Did anybody get off?

A. Yes, sir, there was one,—not right there. One boy that was with us got off at the station, a little west from there.

Q. What is his name? A. Morris.

1951 Q. How many did not get off?

A. Maybe four others.

Q. Who paid your fare into Hartford?

A. Some of the union men. I don't know who, some of them.

Q. Did you hear this same man that had spoken to you in the depot at Ft. Smith talk to one of the employes with you named Sam Smith, after you got to the station at Hartford?

A. No, sir, I don't think it was that man that talked to Sam. It was a bunch of men, I didn't know who any of them were, as far as that was concerned. They bunched up around us and they recognized Smith. He had been there once before.

Q. That is, Sam Smith, one of the employes?

A. Yes, sir, they recognized him and advised him not to go to work over there.

Q. Do you know what he did?

A. They took us to the hotel and put us up there, and Smith stayed until about three o'clock that morning and the following morning got up and left.

Q. What did the rest of you do?

A. We stayed there until morning, and they gave us breakfast, and then we went on to the depot at Hartford.

Q. How did you get out of town?

A. I walked out.

Q. How far did you walk?

A. I walked from there to Jansen up here, I believe is the station I got on.

Q. How far is that from Hartford, do you know?

1952 A. No.

Q. Were Lee Rogers and two or three other employes with you?

A. Yes, sir. Lee Rogers and a man by the name of,—if I can think of his name now,—I can't think of his name now, but they were there, and a man by the name of Rogers and a fellow by the name of Jim Burks, and his brother, but I don't remember his brother's name, and another young fellow. I disremember his name now. I was not real acquainted with Burks and the other fellow I disremember the other fellow's name.

"Cross-Examination.

"Q. What day was it you came out of Hartford?

A. On Tuesday.

Q. When? A. On Tuesday.

Q. Tuesday? A. Yes, sir.

Q. So you don't know who you talked to on the road over there?

A. No, sir, I didn't recognize any of the men, Mr. Covington. I didn't know any of them.

Q. You had never met them before? A. No, sir.

Q. You never met them since?

A. No, sir, not that I know of.

Q. No, who was the man you referred to a moment ago?

A. Who was he?

Q. Yes.

A. Well, I don't know, only what I was told.

1953 Q. Well, I know, but what was the name of the fellow who told you?

A. His name was Smith, I was told.

Q. You were told that a man named Smith told you?

A. Yes, sir, the man that was talking to me down in the depot.

Q. You don't know whether it was Smith or not?

A. No, sir, I don't know anything except what I was told.

Q. Now, who were the men that made the statements on the train going down to Greenwood?

A. I could not tell you.

Q. You did not know them?

A. No, sir, I did not know them.

Q. What was your particular job at the Bache-Denman mine?

A. Well, I was employed there as a kind of top boss at night.

Q. What were your duties there?

A. To see that the fireman kept steam and that the engineer man hoisted water.

Q. Well now, you were given a gun, were you, when you got down there?

A. Yes, sir, I had a gun.

Q. What? A. Yes, sir, I had a gun.

Q. To see that the fireman kept fire in the boilers and that the engineer hoisted water?

A. I reckon so, I don't know what else."

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1954 Mr. Lucas: We offer the testimony of WILLIAM WILLETT, found on pages 1180 to 1182, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issues in this case.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Direct Examination

"Q. State your name?
A. Will Willett.
Q. What is your occupation?
A. Miner.
Q. Have you mined practically all of your life?
A. Yes, sir.
Q. You have been in the army, too?
A. Yes, sir.
Q. When were you in the regular army?
A. In 1904. I was discharged in 1907,—three years.
Q. Where were you born and raised?
1955 A. I was born and raised in Clarksville, Arkansas, Johnson County.
Q. Did you know in 1914 a man by the name of Jim Lackland? A. Yes.
Q. Did he get you to come to work for the Bache-Denman Company? A. Yes.
Q. What were your duties?
A. To guard property.
Q. When did you go down to Prairie Creek No. 4?
A. The 9th of July.
Q. And you went to work on that day as a guard?
A. Yes, sir.
Q. Were you given a gun? A. Yes, sir.
Q. By whom?
A. The United States Marshal suggested I should have a gun and go to work.
Q. Do you remember that marshal's name?
A. No, sir, I do not.

Cross-Examination.

Q. How long did you work there?
A. From the 9th of July until the 17th.
Q. You were one of the guards that shot up Frogtown on the Sunday before the 17th?
A. No, sir.
Q. You were not one of those that shot up that town?
1956 A. No, sir.

Mr. Hull: Did you know anything about the shooting up of Frogtown, Mr. Willett? A. No, sir.

Q. Do you know that any guard shot up Frogtown on the night of July 17th? A. No, sir.
Q. Or any other time? A. No, sir.

By Mr. Warrum:

Q. Were you on duty day time or night time?

A. Night duty.

Q. Do you remember the circumstance of the guards sitting up, those that were on day duty, as well as those on night duty, sitting up the night of the Sunday preceding the 17th of July and discussing the shooting up of Frogtown and joking and laughing about it? A. No, sir.

Q. Were you at the headquarters where the guards congregated? A. No, sir.

Q. Where were you?

A. I was on the railroad,—the switch that runs into the mine. There was some dirt there, they had there to make a levee and I was sitting on that.

Q. Do you know where Frogtown is?

A. No, sir, I don't know. I have heard about it, but never was there.

1957 Q. Did you hear shots fired that night?

A. No, sir.

By Mr. Hull:

Q. Were you stationed at this particular levee that night?

A. Yes, sir, that was my place."

(Witness excused.)

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Mr. Lucas: We offer the testimony of MRS. MAHALA BARNES, found on page 1316 to 1317, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination.

Q. What is your name, Mrs. Barnes?

A. Given name?

Q. Yes. A. Mahala Barnes.
Q. Where do you live?
1958 A. I live at Braden, Oklahoma, now.
Q. Where did you live in 1914?
A. I lived at,—let's see, we lived at,—
Q. (Interrupting). Can you talk a little louder? She has not a strong voice, we will have to do the best we can with her. Let's all keep quiet. Now, talk loudly. Where did you live in 1914? A. Let me see, in 1914?
Q. Yes, we will say in April, 1914, where were you?
A. Why I was there at No. 4 Prairie Creek, in April, 1914.
Q. Now, do you remember the day that they had the rio' there at No. 4? A. Yes, sir.
Q. Where were you living that day?
A. The day they had the first one I was living right back of the mine, in the bunk house.
Q. Who was living there with you?
A. Levi Brown and his wife.
Q. And your husband? A. Yes, sir.
Q. Now, was Levi Brown sick that day?
A. Yes, sir.
Q. When was he taken sick?
A. He was taken sick on Sunday night.
Q. That was the day before the riot?
A. Yes, sir.
Q. Was he in bed on Monday?
1959 A. Yes, sir, he was in bed all Sunday night and Monday.
Q. Now, state what occurred, if anything, at the bunk house on the afternoon of that Monday?
A. On the afternoon of that Monday they came in there and ordered us to leave and wanted us to give back and let them through, and they were going to drag him out and whip him.
Q. Drag who out?
A. Levi Brown; and they said he jumped into bed just to keep them from getting him, but we kept them out.
Q. Who? A. Mrs. Brown and me.
Q. What did you do to keep them out?
A. We talked to them, and kept them back.
Q. What did you have? A I had a butcher knife
Q. Did Mrs. Brown have a butcher knife, too?
A. Yes, sir.
Q. Did you keep them from going in there?
A. Yes, sir, we kept them back.
Q. And what was the crowd saying and doing all that time?

A. They were calling us scabs and everything they could lay their tongue to.

Mr. Hull: I believe that is all.

Mr. Warrum: No cross-examination.

(Witness excused.)"

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Mr. Lucas: We offer the testimony of GEORGE ALFRED DAVIS, found on pages 1376 to 1381, inclusive.

1960 Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court: but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination.

Q. State your full name.
A. George Alfred Davis.
Q. Where do you live, Mr. Davis?
A. I live at Ft. Smith.
Q. Where are you working now?
A. I am picking cotton at Braden now.
Q. Were you employed by the Ft. Smith Folding Bed & Table Company? A. Yes, sir.
Q. In June, 1914, did you go to work for the Bache-Denman Coal Company? A. Yes, sir.
Q. At Mine No. 4? A. Yes, sir.
1961 Q. What were you employed to do?
A. Caging.
Q. What does that mean?
A. Putting coal on the caging down on the bottom.
Q. Now, coming down to the 17th day of July, the day of the battle, when the employes of the mine were run off, state what you were doing and what you saw that morning?
A. Well, I and my brother was standing in front of the office and they commenced shooting in that direction.

Q. What direction was that? Do you know where the school house was? A. Yes, sir.

Q. With reference to the school house what direction did the shooting come from?

A. Right from the school house,—from the direction of the school house, the first shooting.

Q. Where did you go?

A. I ran and got in behind a tree when the shooting commenced, and my brother ran right on off. He went off just as quick as the shooting commenced.

Q. What did you do after that?

A. Well, I run and run into the shop.

Q. What shop was that?

A. The blacksmiths shop.

Q. Now, do not make me ask you a question every few seconds. State what you did from the time you went
1962 into the blacksmith shop, and what occurred?

A. I went into the blacksmith shop, and I went and got in behind the pump,—a water pump; and fixed me up a breast work in there to keep the bullets from hitting me. The bullets was coming through the shop mighty near like hail, and there was a bullet hit the pump and fell down right by my face.

Q. Was that a lead or a steel bullet? A. A steel bullet.

Q. State if you know when the employers left the mine?

A. Well, the biggest crowd left about 11:30, as well as I can remember.

Q. Did you go with them?

A. No, sir, I stayed in there.

Q. You stayed in the blacksmith shop, did you?

A. Yes, I stayed in the blacksmith shop.

Q. State what occurred after the employes left with reference to anyone coming into the blacksmith shop?

A. Well, it was about 1.30 when they came into the blacksmith shop.

Q. Who came in there?

A. There was seven men came into the blacksmith shop.

Q. Did they have guns?

A. Yes, sir, they had guns, Winchester shot guns.

Q. Had you ever seen any of them before?

A. I knowed one fellow's face, but I didn't know his name. He was well acqquainted with my father, though.

Q. Where did he live? A. He lived at Hartford.

1963 Q. Was he a miner? A. Yes, sir.

Q. Had he ever worked at No. 4 mine that you knew of? A. No, sir.

Q. He was not working there with you at the time the mine was running open shop? A. No, sir.

Q. Can you say then whether he was a union miner or not?
A. Yes, sir.
Q. State what the seven men did?
A. Well, they came in there and they all threw their guns on me and told me to crawl out, and I crawled out and they told me to give them my gun, and I told them I didn't have any gun, and one of them said, "Yes, you have." I said "No, I ain't got any gun," and they asked me then where the rest of them was, and I told them I didn't know. They asked me which direction they went and I told them I couldn't tell; I was in the shop all the time. From the time I went in the shop I never seen nothing, you know.
Q. Did they make any proposition to you as to what they would do if you would tell them?
A. They told me to tell them where the rest of them was and they would not hurt me. They said, "We aint going to hurt you. Tell us where the rest of them are at." And they asked me if some of them weren't under the floor in the engine room, and I told them no, I didn't know anything about them, where they was. And they looked under the
1964 floor in the engine room and never found anybody.
Q. Did they say anything about killing you.
A. No, sir.
Q. What did they do then?
A. Well, one of the fellows taken some waste out of the coal car—out of the oil box in the coal car and brung that waste up there and handed it to me and handed me a match. That was in the wash house in the corner of the shop we were at that time, and he said, "You light that waste" and I started to strike the match and I broke the match off, and he didn't have any other match, and he asked one of the other fellows if they had a match and one of the fellows handed him a match and he said it was all the match he had. And he grabbed the waste out of my hands and said, "I will set it." And he struck the match and set the waste and piled some old pit clothes on the waste, and the shop went up, it burned up.
Q. Where did you go then?
A. They taken me on out and started over to the school house with me, and they told me not to run. They said, "Don't you run", and we walked on over to the school house and one of the fellows had hold of my arm. Directly after we started he taken hold of my arm, and we got nearly to the railroad there was a union man shot.
Q. One of these seven men with you?
A. No, sir, there was another bunch north of there shot, and he shot this union man in the hand that had hold of my

arm, shot him in the left hand. This union man was
1965 a light complected fellow, [kand] of sandy haired.

Q. Did he say anything about that shot?

A. Yes, sir, he said, "We ought to hit you." And then one of the fellows says, —one of the union men said, "I will take charge of that boy", and this fellow says, "No, I have got him". And we went on up to the school house then and I was awful thirsty and I told them I wanted a drink and they said, "Well, we will give you some water. We ought not to give you nothing."

Q. Whom did you meet up at the school house that you knew?

A. Charley Blackman was in the bunch at the school house. He was all the one I knew.

Q. Did you know who Charley Blackman was?

A. Yes, I knew him well.

Q. Was he a union miner? A. Yes, sir.

Q. Before you left the Mine No. 4 did you see any of these seven men climbing up on the tipple?

A. Yes, sir, I seen them climbing up on the tipple, and there was an old mattress on top of the tipple, an old mattress up there.

Q. Did you see them set fire to that mattress?

A. No, sir.

Cross-Examination

By Mr. Warrum:

Q. Now, these seven men that came to the shop, one of them was a man whom your father knew at Hartford, is that right? A. Yes, sir.

Q. Did you know him?

1966 A. No, sir, I just seen his face, I didn't know his name.

Q. Is your father living? A. No, sir.

Q. He is now dead, is he? A. Yes, sir.

Q. Did you ever ask your father who he was?

A. No, sir.

Q. You are unable to tell the court and jury who this man was? A. Yes, sir.

Q. Or what his name was?

A. No, sir, I don't know his name.

Q. Can you identify him by any position he then held?

A. No, sir, I don't believe I could. I was nothing but a boy [whe] my father was living.

Q. How old are you now? A. 24 years old.

Q. Now, was Charley Blackman one of the seven men that you spoke of? A. No, sir.

Q. Was he present when the men were climbing up the tipple? A. No, sir, I don't think he was.

Q. Who is Charley Blackman? Is he a Hartford man?

A. Yes, sir.

Q. He lived in Hartford at that time, did he?

A. Yes, sir.

Q. Where was he at the time you saw the men climbing up the tipple?

1967 A. He was over at the school house.

Q. He had not come over to the mine yet?

A. No, sir, there was a bunch stayed over at the school house.

Q. Now, while you were walking from the shop where these seven men found you over to the school house, one of the men that was with you was shot in the hand, isn't that right. A. Yes, sir.

Q. Did you see the man who shot him?

A. No, sir, I didn't see him. We just heard the gun fire.

Q. Then you don't know who it was that shot him?

A. No, sir. I just judged it was a union man shooting in because he hollered at him.

Q. Were the guards doing any shooting that day at all?

A. The guards?

Q. You had guards there, did you? A. Yes, sir.

Q. How many? A. I don't know how many there was.

Q. And they had guns, didn't they? A. Yes, sir.

Q. Was there 12 or 15 guards?

A. Somewhere in that neighborhood, I think.

Q. And some of the others that were not guards had guns, too, did they not?

A. Yes, sir, everybody. They all run in the office and got guns.

Q. What time did the shooting begin?

A. Well, it began about eight o'clock.

1968 Q. Eight o'clock in the morning was when you first heard it? A. Yes.

Q. And it was then they ran in and got guns, was it?

A. Yes.

Q. Then did they take different positions over the camp behind the enclosure, or did they all get together, the guards and others? A. After they got guns?

Q. Yes, sir.

A. Well, they all kind of scattered out.

Q. They scattered and took different positions?

A. Yes, sir.

Q. They were doing some shooting, were they not?

A. Yes, sir, there was some of them shooting. Of course some of them run off. I don't think some of them done any shooting at all. They were making their get-away.

Q. Some ran away at once, did they? A. Yes.

Q. And some remained and kept up the shooting themselves, is that right? A. Yes.

Redirect Examination

"Q. From what direction did that shooting come, Mr. Davis? A. That shot the man through the hand?

Q. Yes.

A. It came from a north direction—from the mine.

Q. Where would that be?

1969 Toward what place, if you know any place?

A. That would be toward Midland.

Q. How long before that had all of the employees left the mine? A. How long before that?

Q. How long before the man was shot in the hand had all of the employees left the mine, if you know?

A. It was about a half an hour or three quarters of an hour or something like that.

(Witness excused).

Mr. Lucas: We offer the testimony of HANNIBAL GREEN found on pages 1584 to 1588 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Direct examination

"Q. What is your full name? A. Hannibal.

1970 Q. Hannibal Green? A. Yes, sir.

Q. Where do you live? A. Jamestown.

Q. Arkansas? A. Yes, sir.
Q. Where did you live in July, 1914?
A. I was living north of South McAlester about six miles.
Q. McAlester, Oklahoma? A. Yes, sir.
Q. Do you remember the date of the battle of July 17th down at Mine No. 4, Prairie Creek?
A. Well, I don't know what time it was.
Q. You remember the incident of the battle?
A. Yes, sir, I know.
Q. Now, if that was on Friday, state whether or not on the Wednesday before that, that is two days before, you heard something over at your home about what was going to happen at Prairie Creek.
A. There was some boys come down, there were three of us ]doen] on a little creek, called Coal Creek fishing.
Q. Come down from where?
A. From Krebs, Oklahoma; that is just a little piece from South McAlester, about seven or eight or ten miles.
Q. Who were those men?
A. I don't know their names.
Q. What was their business down there?
A. They come down there fishing.
1971 Q. What was their business?
A. They were working in a coal mine.
Q. Union mines? A. Yes, sir.
Q. What did you say to them, or they to you?
A. I didn't say anything to them, but along in the evening, about 4:00 o'clock, one of them said to the other, "We had better go on home, we are liable to be called to Prairie Creek any minute, we can't stay out tonight."
Q. What did they say about what they were going to Prairie Creek for?
A. They said there was trouble down there, there was trouble down in Prairie Creek.
Q. Did they go into detail at all as to what the trouble was? A. No, sir.
Q. Or as to what they were going for?
A. No, they never said what they were going for.
Q. What did you do as the result of hearing that?
A. I had some folks down there, and I was afraid, I didn't want them hurt, and I got on the train the next morning and went down there.
Q. Who did you have at Mine No. 4? A. A boy.
Q. And a daughter? A. Yes, sir.
Q. What was the daughter doing there?

A. Cooking.
1972 Q. Cooking? A. Yes, sir.
Q. And what was the boy doing?
A. He was working there at the mine, I don't know what he was doing.
Q. Then what did you do?
A. I went to Hartford.
Q. What time did you get to Hartford?
A. Sometime in the evening or afternoon, I don't know what time it was.
Q. What day was that?
A. The day before they tore up Prairie Creek, the day before the fight.
Q. Was that on Thursday?
A. Yes, sir, Thursday in the afternoon sometime, I got out there.
Q. State what occurred when you got off the train?
A. I started over that way, and some boys there asked me where I was going, and I said I was going to Prairie Creek, and they said I couldn't go, that there was trouble and I couldn't go.
Q. Who said that?
A. I don't know who they was, I didn't know any of them.
Q. There was one man that you knew, was there?
A. No. I stayed around there a while then, and thought I would go over there anyhow, and I got over a little piece and a fellow followed me up about half way through town and said he was financial secretary, and did not want me to go over there.
Q. Financial secretary of what?
1973 A. Of the local there.
Q. Do you know that man?
A. He said, somebody said he was Red Doyle.
Q. What did he look like?
A. Like a man, read haired and sandy mustache.
Q. What did he tell you?
A. He said he was financial secretary there, and there was going to be trouble, and he didn't want me to go there, and he asked where I came from, and I said from Krebs, Oklahoma, and that is all he said to me.
Q. Did you go there?
A. No, I stayed there a little while, and thought I would go anyhow, and I started over there, and got on the railroad and went up to a path, and turned like I was going to Prairie Creek, and there were four or five men in the path.
Q. What time was that?

A. About 7:00 o'clock in the evening, just a little before sundown, and they told me I had better not go over that way that there was liable to be fighting over there, and I would get killed.

Q. Did you go?

A. No, I turned and went back to Hartford. They said I could not go; they said nobody was allowed to go over there.

Cross-Examination

Q. Where is Krebs?

A. Well, it is in Oklahoma, not far from South McAlester

Q. How far from Prairie Creek?

1974 A. I don't know how far it is; about 60 or 70 miles I would say.

Q. 60 or 70 miles?

A. I don't know how far it is.

Q. Is that your estimate?

A. Yes, sir.

Q. How long did it take you to go from Krebs to Prairie Creek?

A. I don't know exactly what time I started; along about noon, or a little afternoon. No, it was eleven something.

Q. You started at eleven something? A. Yes, sir.

Q. What time did you get there, please?

A. It was along about the middle of the evening, I think.

Q. The middle of the evening, did you have to make any changes, or was that a continuous train?

A. No, went right straight through.

Q. Went right straight through?

A. Yes, sir.

Q. Now, it was at Krebs that you were living when you heard this conversation?

A. No, I was living six miles north of Old McAlester, out on a little creek called Coal Creek.

Q. When you heard this conversation with the fishermen?

A. Yes, sir.

Q. And is that further from Prairie Creek or Krebs?

A. I don't know whether it is any farther from them or not.

Q. How far is McAlester from Prairie Creek?

A. It is a little further than Krebs, six or seven miles,

1975 I don't know how far it is out there.

Q. Were you living on a farm?

A. Yes, sir.

Q. Farming there, were you?

A. Yes, sir.
Q. And there is a little stream running through your farm?
A. Yes, sir.
Q. And how many men were fishing there?
A. There were three, I believe.
Q. Do you know the men, did you?
A. No; I didn't know; I had saw them several times out there hunting and fishing.
Q. You had seen them working in a coal mine there?
A. Yes, sir.
Q. You know them to be coal miners?
A. I know they said they were, and I went out to a picnic afterward and saw them there.
Q. Were you sitting on the bank fishing with them?
A. Yes, sir.
Q. All four of you there?
A. Yes, sir.
Q. And one of them said they had better get up and go home, they didn't know how soon they were liable to be called to Prairie Creek? A. Yes, sir.
Q. And you got on the train and come to Hartford on your way to Prairie Creek?
1976 A. The next day.
Q. And when you got off at Hartford, were you acquainted at Hartford, by the way?
A. Yes, sir.
Q. When you got off at Hartford did you meet anyone that you knew? A. No, sir.
Q. As you were walking down the street this man who said he was financial secretary—
A. Yes, sir, there was some fellow asked me, there was a little old restaurant there, and they were all standing there, and they asked me what I was doing, and I said I was going out to Prairie Creek, and they said I couldn't go out, there, had better not go out there, there was liable to be trouble there.
Q. And this man that told you said he was the financial secretary?
A. No, sir, I went on up the street and he followed me up a piece, and told me that, not to go, that he was financial secretary of that local.
Q. And that evening you did stop at about 7:00 o'clock?
A. Yes, sir.
Q. And you went a piece of the way and found some men with guns there?
A. No, sir, they didn't have any guns

Q. They didn't have any guns, but they warned you you had better not go on?

A. Yes, sir, said I had better not go there; they were
1977 just sitting by the side of the road.

(Witness excused.)

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Mr. Lucas: We offer the testimony of E. LEE HARMON, found on pages 1701 to 1707, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

"By Mr. Hull:

"Q. What is your name?

A. E. L. Harmon.

Q. Where do you live Mr. Harmon?

A. At Enid, Oklahoma.

Q. Have you been going to school there?

A. Yes, sir.

Q. Were you at school there in 1914?

A. Yes, sir, I was in the fall of 1914.

Q. In the spring of 1914 were you living in Mena, Arkansas? A. Yes.

1978 Q. How long did you live there?

A. Just six weeks. I went down there really on a visit. I was working in Kansas.

Q. Did you come up to Prairie Creek about the first or the middle of June, as a United States Deputy Marshal?

A. Yes, I came at the same time Mr. Schell came.

Q. How many came with you?

A. 15 or 20 came from Mena.

Q. Was Joe Parrish and Ed Parrish in that crowd?

A. Joe was, but Ed came later. He just came up there to work.

Q. He came later to work? A. Yes.

Q. State the trouble that occurred on the train on June 15th. First, did you get your commission in Ft. Smith before you went to the mines?

A. No, I went down to work for the coal company.

Q. You were not commissioned as a United States Deputy marshal then? A. No, sir.

Q. Were you at a later time?

A. I was on June 1st, and we were there and had our commissions nine days.

Q. Then on June 15th were you going back to work for the company? A. Yes.

Q. State what occurred on that train?

1979 A. We got on the train here and everything was peaceful until we reached Midland where several union men got on.

Q. Can you give the names of any of them?

A. I can give you the names of three of them, Clint Burris, John Manick and Robinson.

Q. Do you know Robinson's first name?

A. Sandy, is all I know of his name. And Sandy and Clint Burris had ball bats and they were telling what they were going to do. They said something about they assumed they were going to gang up on Sandy, that we were, and he said, "I guess they won't", and he put the ball bat over Boraski—over his head and said "You ain't going to get off at the crossing," and they would not let any of us get off. I was sitting by Clarence Shaleen and Sandy said to me. "Do you know who this is?" And I said, "No". And he said that he was a scab that worked on the floor and that if I had any respect for myself I would not sit by him. And I went back to the ladies coach and sat down and when I got to the crossing I went out the back way with my suit case and was not molested.

Q. By going back into the ladies' compartment you got out of trouble?

A. Yes, but I saw the trouble from the outside. Schell tried to get in and get the men out and they tried to block the way and one fellow said, "You better let him get in", and he came in and got all of the men off but one.

Q. Was Shell deputy marshal at that time?

A. Yes.

1980 Q. Was there any trouble in the woman's compartment of the train? A. No.

Q. Coming to July 17th, the day of the battle, can you state with whom and when you left the mines?

A. I left the mines between 1:00 and 1:30 with Pat Molloy and Ed and Joe Parrish.

Q. State what you had been doing that morning?

A. That morning,—well, I was doing the electrical work. They called me about midnight and said that the lights were out, and too see what I could do with them, and I got up and found the line had been cut and there was no current in there at all.

Q. You were the electrician of the company at that time, were you? A. Yes.

Q. Go on.

A. And we sat up a while and nothing happened, and so I went back to bed. And about four o'clock a volley of shots came in, and we got up and some of the boys answered back with their rifles; and things were peaceful then until about seven o'clock, I guess. I had breakfast and the shots began coming in. I don't remember the foreman's name, but he sent Schell out to find out where the high tension line was cut. It had been cut once before and I found the place and fixed it. And when we were out we heard the plant whistle blow, and Mr. Moore came out in the company's buggy, and some other gentlemen.

Q. Who were there, Bud Eustis?

1981 A. I don't know who it was. And he said we had better come in, that they were closing in on us. And we cut from the Midland Valley into No. 4. And they were firing in on No. 3, then, and the boys were coming across the prairie, as fast as they could run to No. 4. They were firing all day there. We were out in front in cars and along about noon we didn't hear any firing from the tipple where the rest of the bunch were, and we thought maybe they were just saving their ammunition. And about 12:30 we went over there and did not find anyone there. Pat Molloy went over there and said they were all gone, and then I went over and they were all gone. And we stayed there a while and didn't know where to go, and we finally went back and went out through a patch of woods and went around to the corner of the hill where this man was working a coal mine, and we asked him for a drink of water and he wanted us to have dinner and we didn't think we had better take time to eat dinner, and the lady gave us some bread and we went on to Mansfield.

Q. How long after you left the mine did you see No. 4 tipple in flames?

A. As we were [oing] out through the woods the men were running and shooting and coming in then.

Q. Did you hear them say anything?

A. I heard several voices and one of them said, "Set the son-of-a-bitch afire", and I could hear voices echo, "Burn her, burn her"; and by the time we were going out of the trees we saw the tipple afire clear to the bottom. We could see the flames.

1982 Q. Where did you go after you left the mine?

A. We went to Mansfield?

Q. Did you walk to Mansfield?

A. All but about the last mile and a half, when we met a fellow in a Ford coming along and he took us into Mansfield.

Q. What did you say to him?

A. It was the same day as the battle. He said he would haul anybody but a damned scab. He didn't know who we were. He thought we had been over there to shoot up No. 4. He said he hauled four loads over there and guessed he had done his part. He took us on to town. We didn't want to go in town in the car,—

Q. (Interrupting). Did you say anything to lead him to believe you were on the other side?

A. He asked us where we had been and I said, "We have been over to No. 4", and he said, "I guess they done a pretty good job over there" and we said "Yes". We didn't tell him what side we were on, and he assumed we had been over there to help destroy the mine.

Q. After you got to Mansfield, what happened?

A. We went to the depot, and the depot agent also assumed the same thing, that we had been over there to help. I guess everybody from there had been over or were over there. And he wanted us to express our rifles and came outside and he said, "There are some damned United States marshals over here and you will get in trouble". And so he expressed our rifles to Ft. Smith in our name.

1983 He didn't want to express them for us, he said, "if you express them up there, some of the fellows, the coal company fellows, will get hold of them. You better ship them to McAlester". But we did not want to send them there and we induced him to send them here, and he gave the receipt to Joe Parrish and he said we would be all right, that we had got rid of the guns, and they would not fine us.

And Pat Molloy started up town and some 12 or 15 fellows came around the corner and jumped on us and knocked me down and stamped around over me. Pat Molloy ran and I don't know what became of him; and some other fellow came up and stopped them. They were all on me, and I went and got the doctor to dress my wounds, and I hired a car to come to Ft. Smith, and he agreed to bring me here for eight dol-

lars and I paid him and we barely got started when he said, "We will never get through Huntington", and he got scared and would not take me, and he took me back to the depot and I stayed there until the evening came in and then I went to Ft. Smith. He gave me back my eight dollars.

Q. Were you there the Sunday night before the big battle?

A. Yes, sir.

Q. Did you go over in town that night and shoot the place up? A. No, sir.

Q. Did you know of any other guards or employes at the mine doing that? A. No, sir.

Mr. Hull: You may cross-examine.

1984 Cross-Examination.

By Mr. Covington:

Q. When did you go to Prairie Creek as a United States marshal? A. About June 1st.

Q. Where did you come from? A. Mena, Arkansas.

Q. From Mena, Arkansas? A. Yes, sir.

Q. Did anyone else come up with you?

A. 15 or such a number, yes.

Q. How many? A. About 15.

Q. Were they out of school, too, with you boys?

A. School.

Q. Were they school boys like yourself?

A. No, sir, they were Mena boys.

Q. Who was in charge of this Marshal's force at Prairie Creek at that time? A. Mr. Holt and Mr. Johnson.

Q. Mr. Holt and Mr. Johnson? A. Yes, sir.

Q. How long did you work as a United States marshal?

A. Nine days.

Q. Then you entered the employ of the company?

A. Yes, on June 15th.

Q. How many of the others who went there as United States marshals entered the employ of the company when you did?

1985 A. One, Ed Parrish.

Q. Did Joe Parrish remain there?

A. No, he was not a marshal. It was Joe Parrish that went back. Ed Parrish came the day before the battle, as I remember.

Q. Where were you on Sunday night before the battle occurred on the 17th,—Friday, the 17th?

A. I was there in the camp, I never was out of the camp.

Q. What were your duties about the mine?

A. I was electrician .

Q. What time do you say you left the tipple on the 17th?
A. Between 1:00 and 1:30.
Q. Between 1:00 and 1:30?
A. Yes, sir, as I remember it.
Q. How long was it after that that you saw the fire?
A. It was over half an hour at least.
Q. Did you stop out near the mine?
A. Yes, sir, we stopped just east of the mine in the woods along the side of the road.
Q. Could you see the tipple?
A. Yes, we saw the top of it.
Q. Could you see the ground around the tipple?
A. No.
Q. How far had you gone from there before you saw the fire?
A. We could see the smoke before we left the woods and when we got around on the east side of the hill.
Q. Thirty minutes after you left the tipple you discovered the smoke?
1986 A. It was longer than that.
Q. Well, about how long?
A. Oh, it must have been an hour before we saw any smoke. They didn't come in right after we left.
Q. They did not come in right after you left?
A. Not immediately.
Q. You could just see the top of the tipple, then how could you see the men gathering around the mine?
A. There was an opening and we were close to the road and we could see them crossing the road.
Q. How far away from the mine?
A. They were about 300 feet from the fence.
Q. And about 400 feet from the mine?
A. I guess so.
Q. And you just saw the top of the tipple?
A. We could look in that direction, look straight west and we could see the bare ground.

Mr. Covington: That is all.

Re-direct Examination.

By Mr. Hull:
Q. Was the tipple on fire when you left it?
A. No, sir.
Q. You did not set it on fire, did you?
A. No, sir.
Q. And Pat Malloy did not set it on fire?
A. No, sir.

Q. Did Ed Parrish set it on fire?
1987 A. No, sir.
Q. Did Joe Parrish set it on fire? A. No, sir.
Q. How old was Ed Parish?
A. I don't remember, he was about 22.
Q. Was he going to school at Mena at the time he came there?
A. He had went to high school. He was not then.
Q. How old is Joe Parrish?
A. He was along there, but I don't know just how old he was, he was a year or so from that.
Q. He was also in school then? A. Yes.
Q. How old was Pat Molloy? A. I don't know.
Q. Do you know where Pat is now? A. No, sir.

Mr. Hull: That is all.

(Witness excused.")

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Mr. Lucas: We offer the testimony of W. J. SMITH found on pages 1758 and 1759, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason
1988 that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. State your name. A. W. J. Smith.
Q. Where do you live? A. I live at Clayton, Oklahoma.
Q. What is your business? A. Farming.
Q. Did you live in Midland?
A. I ain't living at Clayton now. I live at McCawber, Oklahoma, now.
Q. Did you live in Midland or near there in July 1914?
A. Yes.

Q. Do you remember the battle down there July 17th, 1914? A. Yes.

Q. What did you see in Midland the morning of the fight?

A. I just seen the people rustling and starting about first one way and then another.

Q. Did you see any men leave Midland with guns?

A. I saw them go down the road below Midland a little ways.

Q. In what direction?

1989 A. Going towards No. 4.

Q. Did you see a man by the name of Fitzgerald that morning? A. Yes.

Q. Who was Fitzgerald?

A. He was the man that run a hotel there.

Q. What did you see him doing?

A. I seen him on a horse going out across the street.

Q. Going towards No. 4? A. Yes.

Q. What did he have on the horse?

A. I don't know—he had a couple of sacks on the horse and seemed to be pretty well loaded. I don't know what was in them, but the remark was made by two or three there that it was the second trip he made.

Q. Who were the men that made the remarks, were they union miners or not?

A. I don't know, they were supposed to be.

Q. Never mind what they were supposed to be. Did you see Fitzgerald make more than one trip from Midland this morning with that horse?

A. I am not positive I saw him make two, but I know he made one.

Q. Did you see Jim Lee that morning? A. Yes.

Q. What, if anything, did you see him do?

A. Well, I didn't see him doing anything in particular.

Q. Did he have a gun? A. No, not that I seen.

1990 Q. Do you know whether the stores in Midland would sell to these employees of the Bache-Denman Company?

A. I never seen them try it but the talk was all over by everybody they wouldn't do it.

Q. Was there any one man that was known as a man that would sell them?

A. I heard one or two men say that no one would sell to them but Buck Tharel and they was going to try to get him to quit it.

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:

Q. How old a man is Mr. Fitzgerald?

A. How old?

Q. Yes, he is an old man, isn't he?

A. He is tolerable old.

Q. He is about 70, isn't he?

A. He is older than I am. I have heard him tell his age, but I don't remember.

Mr. Covington: That is all.

(Witness excused.)"

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Mr. Lucas: We offer the testimony of Mrs. S. Smith, found on pages 1759 to 1760, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court: but the defendants separately object to the introduction in evidence of any of this testimony
1991 and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. State your full name.

A. Sabitha Smith.

Q. Are you the wife of the last witness? A. Yes.

Q. You lived near Midland in 1914?

A. Yes, sir.

Q. What did you see of the morning of the day of the battle of July 17th, 1914?

A. I saw what they called the unions going down the road with their guns on their shoulders.

Q. Whom did you see?

A. Well, I have got their names here, I can't remember all their names just by telling it, but I have them written down here.

Q. See if you can remember one man that left his gun at your house? A. Yes, sir, I remember Jim Law.

Q. Do you know where he worked?

1992 A. He worked at No. 4.

Q. What did he say when he left? Either when he left the gun or when he came after it?

A. Well, he brought the gun there and told me—he said, "I want to leave my gun here" and I said, "No, I don't want you to." and he said "Why"? And I said, "If you do, take the shells out of your gun and put it away yourself". And he put it away himself.

Q. When did he come back after the gun?

A. He never came back at all.

Q. Did he ever say anything to you about what had happened that day?

A. Why, he said they had done up the work in general down there and he didn't think there would be any more hereafter scabs.

Q. Who else did you see that morning that you can remember without looking at anything?

A. A young fellow by the name of Picking Tillery.

Q. Do you know where he worked?

A. He worked at No. 4 part of the time.

Q. Did you know a man by the name of Benny Morfew?

A. Yes, a young man.

Q. Did you know where he worked?

A. At No. 4.

Q. At No. 4 Prairie Creek?

A. It is the mine down there they call No. 4; I don't know whether it is No. 4 Prairie Creek or No. 4 Mine. They just call it No. 4.

Q. He had worked there before they went on the non-

1993 union basis, had he?

A. I could not tell whether he had or not. Anyway, he worked at No. 4 mine down towards Prairie Creek.

Q. What did he say to you during the day some time?

A. Well, he came around back there—I am well acquainted with him. He came around back to talk to me and I asked him what was the matter, and he said they had Earl Sylesberry caught, And I said, "What are they going to do with him?" And he said, "I guess they are going to kill him," that they had him tied up by the hands.

Q. Did Picking Tillery have a gun that day?

A. Yes. He is a fellow down towards Prairie Creek.

Mr. Hull: That is all.

Mr. Covington: No questions.

(Witness excused.)

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Mr. Lucas: We offer the testimony of Miss Millie Smith, found on pages 1761 to 1762 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

1994 To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. State your name please. A. Millie Smith.

Q. You are the daughter of Mr. and Mrs. Smith who have just testified? A. Yes.

Q. You lived in Midland in 1914? A. Yes.

Q. Do you remember the day of the big battle at Prairie Creek No. 4? A. Yes.

Q. Did you know Denny Morfew? A. Yes.

Q. Did you know where he worked?

A. At No. 4.

Q. No. 4 Prairie Creek?

A. I don't know just exactly whether it is No. 4 Prairie Creek or not.

Q. Do you know whether he was working there before it went on a non-union basis?

A. Well, he was working there. I don't know just exactly whether it was before they quit or not.

Q. Do you know whether he was a union miner?

A. Yes, he was.

1995 Q. Did you see him that morning of the battle?

A. Well, I never saw him until about 10:00 or 11:00 o'clock.

Q. Did he come up to where you were then?

A. He come up to our house.

Q. What did he say, if anything? What did you hear him say? A. I was not exactly right where he was.
Q. Did not hear what he said?
A. No.
Q. Did you know a man by the name of Fitzgerald?
A. I don't know him exactly, but I saw him.
Q. Did you know who he was?
A. Yes.
Q. Did you see him start towards Prairie Creek on a horse that morning? A. Yes.
Q. About what time was that?
A. Between 10:00 and 11:00 o'clock.
Q. Was there anything on the horse?
A. Yes, sir, there was two sacks on it.
Q. Did you see him make one or two trips down to Prairie Creek? A. I just seen him make one trip.
Q. Do you know Jim Lee?
A. Yes, sir.
Q. Did you see him that morning?
A. Yes, I saw him about 12:00 o'clock—between 12:00 and 1:00 o'clock.
Q. Do you know ..... Taylor?
1996 A. Yes.
Q. Did you see him? A. Yes.
Q. Where was he going when you saw him?
A. He was going down the track towards No. 4 mine.
Q. Did he have a gun? A. Yes, sir.
Q. Do you remember any others there going towards Prairie Creek from Midland that morning with guns?
A. I saw their faces, but I don't remember their names.
Q. About how many men did you see leave Midland that you saw going towards Prairie Creek with guns?
A. Eight or ten or twelve.

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:
Q. How old are you Miss Smith?
A. I will be 17 my next birthday.
Q. Do you know Denny Morfew very well?
A. Yes, sir. He went to school when I did.
Q. Did he come to your house more than once that day?
A. Well he came to our house one time that evening while I was in. Of course I was not there all the time.
Q. Was it 10:00 or 11:00 o'clock in the evening or morning you saw him?

A. I saw him in the evening.
Q. After dark?
1997 A. No, sir, about three or four o'clock.
(Witness excused.)"

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Mr. Lucas: We offer the testimony of J. B. ATKISSON, found on pages 1762 to 1764, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled

To which ruling and action of the court the defendants at the time duly excepted and still except

"Direct Examination

By Mr. Hull:
Q. Your name is J. B. Atkisson? A. Yes.
Q. Where do you live now?
Q. What is your business?
A. In Rogers, Benton County.
A. Deputy Sheriff of the County.
Q. Were you a United States Deputy Marshal in October
1914 under Marshal Mayes of the Western District of Arkansas?
1998 A. No, I was under Marshal Parker.
Q. When were you sent down to Prairie Creek?
A. I think it was October 27th.
Q. With whom were you sent?
A. Me and Mr. Cole went down there. J. D. Cole, I think his name was.
Q. He also was a Deputy? A. Yes, sir.
Q. State what occurred on the night of October 28th? * * *

Q. State what occurred on October 28th.
A. On October 28th, about 12:00 o'clock there was a good many men came there.
Q. Had you gotten some warning of trouble coming that afternoon? A. Yes.

Q. Who had given the warning to you?
A. I have forgotten their names. They were running a union mine down below No. 4 they said.
Q. Mike Weston. A. Yes.
Q. Did you hear what he said?
A. No, I saw him talking to John Shaleen.
Q. What happened at 12:00 o'clock that night?
A. They shot up the camp.
Q. Had you made preparations as well as you could against this attack? A. Yes, sir.
Q. What had you done to defend that house where you were staying?
1999 A. We hauled up some boiler plate steel and some iron from the mines and put it in one of the rooms, and around the house.
Q. About how many men would you say were in the crowd that attacked you that night, from the shots fired?
A. I judge 300 or 400, maybe more, I judge from the shots fired.
Q. You did not see any of the attacking party?
A. Nothing but the forms of some of them as we got out of the house.
Q. How many were in the house with you that night?
A. Seven or eight, I disremember which.
Q. There were two deputy marshals? A. Yes, sir.
Q. You and Mr. Cole? A. Yes.
Q. Had there been a third deputy during the day?
A. Yes.
Q. What became of him?
A. He got scared up and quit us about sundown in the evening.
Q. Where did he go?
A. He said he was going to Hartford and come into Fort Smith.
Q. What was his name? A. Sid Johnson.
Q. What kind of a looking man was he?
A. He was a great big fellow and said he had been chief of police of Fort Smith, I think.
Q. You left the house then? You escaped from the
2000 house while it was under fire? A. Yes, sir.
Q. Where did you go?
A. We went up to the Fan House, out on the mountain.
Q. Did you look back and see any fire? A. Yes.
Q. What did you see burning?
A. We saw the houses down from where we were at burning. It looker like several were burning.

Q. Do you remember what the house was called where you stayed that night?

A. No, sir, I was a stranger down in that country at that time. I heard what it was called but have forgot

Q. Do you know whether it was what was called the Bent House? A. It might have been, I could not say.

Q. Were you in charge of the marshals down there,—of the deputy marshals that were sent down there, during the entire fall? A. Yes, sir.

Q. Even after the soldiers got there in November?

A. Yes, sir.

Q. Did you, on various occasions make attempts to buy goods and supplies from the stores in Midland?

A. Yes, sir.

Q. What success did you meet with?

A. I was refused. There was only one place in Midland we could get anything from.

2001 Q. What store was that? A. Buck Theral's store.

Mr. Hull: That is all.

Mr. Warrum: No questions.

(Witness excused.)

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Mr. Lucas: We offer the testimony of CLARENCE A. SHALEEN, found on pages 1785 to 1787, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. What is your name? A. Clarence A. Shaleen.

Q. Where do you live? A. Chicago at the present time.

Q. Were you working for the Bache-Denman Coal Company in the spring and summer of 1914?

2002 A. Yes, sir.

Q. When did you go to work for them?

A. About April 15th, 1914.

Q. Without going into detail of what occurred at the Prairie Creek station on June 10th, do you remember some [shops] were cut? A. Yes, sir.

Q. State whether or not you were there?

A. Yes, sir, I was there checking up the freight.

Q. And state if you saw who cut those chops?

A. Sandy Robinson cut the two sacks.

Q. With what did he cut them?

A. A knife, a pocket knife.

Q. Without going into details of what occurred, Mr. Shaleen, will you state whether or not you were on a train on June 15th, when some trouble arose, and deputy marshal Schell was called on the train?

A. Well, I was on that train, I was trying to get off, and John Menick and Clint Burris and Sandy Robinson tried to stop me from getting off.

Q. You were on the train with other employes?

A. Yes, sir.

Q. And who did you say was on that train of the union men?

A. All I could say,—there were 10 or 12 got on at Midland.

Q. And whom did you recognize?

A. They were the only three I recognized, Sandy Robinson, Clint Burris and John Menick.

Q. Did any or all of these three have base ball bats?

2003 A. Yes, sir, three did.

Q. And what did any of them say to you, if anything?

A. They said they were not going to let me off at the crossing there at the mine, that I had to go to Hartford with them, and when we got there I told them they were pulling off a pretty serious offense, and they finally let me go through.

Q. Keep your voice up. Did you see Clint Burris using a baseball bat?

A. I saw him lay it against young fellow by the name of Tony Boraski, a foreigner, and I saw him lay it against his head and strike him with it. He tried to work there at the mine.

Q. Will you keep your voice up, the jury has to hear what you say. Did you go down to the mine with your brother in October, 1914? A. Yes, sir.

Q. Were you there on October the 28th?

A. Yes, sir, I got down there about the 27th, the night of the 27th.

Q. I will ask you if you remember the night of the 28th when some shots were fired in there, and you left the house where you were staying?

A. Yes, sir, I was there.

Q. There were deputy marshals with you there then?

A. Yes, sir.

Q. How many?

A. Mr. Atkisson,—there were two of them, three
2004 came down.

Q. What were their names?

A. And Mr. Cole.

Q. Had there been a third marshal there earlier in the day?

A. Yes, sir.

Q. What was his name? A. Sid Johnson.

Q. When did he leave?

A. He left between 5:30 and 6:30.

Q. Did he say why he was leaving?

A. I didn't hear him say, no, sir.

Q. Did you have any difficulty in buying supplies in Midland while you were down there in October, November and December?

A. Yes, sir, at the drug store, I don't remember the name of the proprietor of the place.

Q. Do you remember whether it was Taylor's drug store?

A. I believe that is the name. I went in to try to buy a piece of camphor, and he refused to sell it to me.

Q. Were you successful in buying that camphor at a drug store? A. No, sir, he said,—

Q. (Interrupting.) Never mind what he said, don't tell what he said. How many men, would you say, were in the attacking party on October 28th, from the number of shots that were fired?

A. I would say from two to three hundred.

Q. Did you, after you left the boarding house, or the house where you were staying that night, look back and see anything burning?

A. Yes, sir, I saw the house burning, from a corn field about a quarter of a mile from there.

2005 Q. The house where you had been staying?

A. Yes, sir.

Q. Did you see any other fire?

A. That is the only one I noticed at the time.

(Witness excused.)

Mr. Lucas: We offer the testimony of J. J. JOHNSON, found on pages 1806 to 1814, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

Q. State your full name.

A. J. J. Johnson.

Q. Where do you live, Mr. Johnson?

A. Well, I make my home now in Jacksonville, Florida, I have for the last year and one-half.

2906 Q. What have you been doing there for the last year and one-half?

A. I have been assistant manager in a paper manufacturing plant for the Salvation Army.

Q. That is your present occupation? A. Yes.

Q. And you are going back there when you get through here? A. Yes.

Q. You came here to testify?

A. Yes, sir, I came up here to be a witness.

Q. What were you doing in 1914?

A. I was a coal miner all my life time since I was small, until two years ago. I was a coal miner in 1914, digging coal for a living.

Q. Where?

A. I was working the first part of that year out at Briceville, Tennessee. I came from there in July out to Prairie Creek.

Q. Were the mines you worked in union or non-union mines?

A. All were open shop mines in Tennessee where I worked.

Q. You came here with Mr. Thomas and his wife and family and the rest of them in the early part of July?

A. I came with Mr. Thomas. Thomas was with the crowd I came with.

Q. You came with him the second time he came?

A. I reckon it was when his family came.

Q. When you got here you came to Prairie Creek?

A. Yes.

Q. To work for these companies?

2007 A. Yes, to work for the coal companies.

Q. What were you doing for them when you got here?

A. I worked about a week.

Q. What were you doing during that week?

A. I worked four days, I believe, as well as I remember. I was assistant boss cleaning up some entries, some old worings that had not been worked for some time.

Q. Did you work day or night? A. Day.

Q. During the week that you were there did you hear any shooting going on?

A. No, I didn't hear anything that I would remember.

Q. Where were you during the night of July 17th, the day before the big battle?

A. The day before, on Thursday,—I worked on Thursday.

Q. The night before?

A. On the night before I stayed on the hill, just above the hill at No. 2 camp or No. 3 camp,—I don't know which it is.

Q. What were you doing there?

A. I was sleeping in the house every night.

Q. You slept during the night of the 16th, did you?

A. Yes, until before day.

Q. What waked you up?

A. A lot of shooting going on around there.

Q. What time was that?

A. It was sometime, I couldn't say just what time it was because we had no time piece at all where we were at,

2008 but it was sometime between two and three o'clock, it was between two o'clock and day time, anyway.

Q. How many shots did you hear?

A. I have no idea.

Q. Well, was it ten or one hundred?

A. I couldn't say. There was more than ten. I could not say how many.

Q. Do you know where those shots came from?

A. No, they seemed to be all outside of the place, right close around it.

Q. Did anything happen from then until breakfast time?

A. We all sat up until day.

Q. The next shooting you heard was when?

A. I got up from the breakfast table, something after seven o'clock. I am not positive just what time it was. Bud Eustis was at the breakfast table, and I heard him say that they were not working, that there was no power on, that the wire was cut.

Well, I didn't know this trouble was brewing as it was and me and a man by the name of Sanders and his wife and old man Daugherty and his son were out to where we slept when I got there. We had left some chairs there and I was picking up the chairs to put them in the house, and right below me at the slope of the mine two or three shots went off quick, and I seen two guards going up from where we were in the direction of the mine and by that time they commenced shooting everywhere.

Q. Those two or three shots, where did they come
2009 from?

A. It was down towards the mine,—I don't kn
shot them.

Q. What do you mean by "down towards the mine"?

A. Towards the slope that was burning up down there.

Q. No. 3?

A. I guess it was. It was above the fan from where we were working.

Q. Were those shots inside the camp or outside?

A. They seemed to be down about the mine. I didn't see who did the shooting, I could not tell.

Q. Then what did you do?

A. Just at that time, when I did this, this old man Daugherty and his son and this other man and his wife started around toward the woods, and I said, "Give me the Winchester, I don't know what is the matter." And I started down, keeping a house between me and the men. I seen it was on fire with the smoke coming up, and I got down to the field and saw the whole place of people and I went back and helped Thomas get his people out of the house.

Q. Where did you go?

A. Over in the woods. There was three or four children lost,—I know three children were lost, anyway, from the parish, little girls. And I got Daugherty and them, and we went down to a bluff, a place we could not get off, a kind of bluff, and I looked over the bluff and seen a lot of men down below with guns and I had a white handkerchief and I threw it up that way (indicating) and we went down maybe 200 yards or further on down the ravine, and we all stopped in a place and sat down.

2010 Everybody was scared and the children were scared and the shooting was continuous all over the place behind us. And I said to the people, "You stay here and I will go off and try to find a place to get out, and if I don't get killed I will come back." And I started off and went 200 or 300 yards through the woods in the direction I started from and I run right upon a man with a gun, within ten feet of him, and he halted me, and I told him I was trying to get out of there. He asked me what I was doing, and I told him I was trying to get out of there, and he said, "You can't get out, every place is guarded, you are up against it." He asked me if I was a guard and I said, "No, coal miner". And he carried me down to the place where the mine was set on fire and the people were all gone. And I told this man I left some women and children back in the woods and I told them I would be back if I wasn't killed, and he said I could not go back, and I said I must, and he let me go back.

Q. Did you tell him where the children and women were?

A. Yes. And when I got back there he was there and some more people.

Q. On your way back, where did you go?

A. I went in the house we slept in to get my coat and the two Daugherty's coats, and I wanted water awful bad. It was awful hot and I had been skirmishing around for an hour and a half and I went in there and could not get any water there and I went on in the Thomas house and as I came out on the steps two windows were shot. I could not tell where the balls came from, but they went in both of the windows and the glass came around both sides of me. And I
2011 wrapped a while towel around my head and went back to the woods and found the women and children and this man was there.

Q. What happened then?

A. We all started for Hartford.

Q. Did you stop anywhere on the way before you got to Hartford?

A. Yes, we stopped for water a half a mile, or maybe a mile it was from there, we stopped at some farmers' for water.

Q. Did you see anybody there that you knew, or afterwards knew who he was.

A. Why, yes, we met up with a fellow by the name of Pattie, and I don't know the names of the other fellows who was there.

Q. Do you know what Pattie's other name was?

A. No, sir, I don't. I am not positive what his other name was.

Q. Do you have any recollection of what his name was?
A. I could not be positive. I dont' know whether it was Charles or not.
Q. Did you know any Pattie back in Tennessee?
A. Yes, I used to know his daddy. He told me Joe Pattie was his daddy. Joe Pattie was the first man I worked for in the coal mines 35 years ago.
Q. Was Joe Pattie there?
A. No, sir, he was dead. That was his boy.
Q. At this spring, did anything happen there in connection with one of the men that was with you, with his children that were there?
2012 A. A fellow had his wife, and I think he had some children. I don't know what his name was. He was told if he went on to Hartford he was liable to get killed, and he was told to run through a corn field and he left there and I never saw him no more.
Q. Then where did you all go?
A. Direct into Hartford.
Q. The women and children went in a hack and you walked?
A. I don't remember of anybody going in a hack. I know I walked.
Q. Your son was along with you?
A. No he was gone.
Q. He came to Prairie Creek with you, did he?
A. Yes.
Q. Did you know where he was?
A. No, sir, I didn't know.
Q. Then when you got to Hartford, where did you go?
A. We went into some house there, I don't know whether it was the mayor's office or where it was, but it was some place there.
Q. Now, those men that were there on the bluff, do you know any of them? A. Which?
Q. The men that you found with your crowd on the bluff, when you came back, did you know any of them?
A. The men that had us?
Q. Yes? A. No, I don't know them.
Q. I don't mean their names, but do you know who they were?
2013 A. I heard them call them. There was two brothers there and they said one was a preacher. I don't know their names.
Q. What kind of a looking man was this man you say you think was a preacher?

A. It seems like he was a chunky fellow. I would not be positive that the one that was chunky was the preacher. He had something tied around his head as if he had been hurt. I don't know whether he was a preacher or not.

Q. When you got to Hartford,—oh, first, describe as near ly as you can the man that you came to, that you ran within ten feet of in the woods?

A. He was a slender man with a very long mustache. It seems to men he had a light, sandy mustache. I can't remember positive. He was a slender man and had a very long mustache.

Q. When you got to Hartford what time was it about?

A. I guess it was a little after 12:00 o'clock when we got there about 12:00 o'clock or a little after.

Q. What happened to you then?

A. We stayed there at Hartford all that afternoon.

Q. What did you do?

A. Well, they carried us into place to make a statement of some kind, to tell about it. I don't just remember how it went off at all. I was excited at that time. My boy was gone and I don't know, to tell the truth, about it. I expected to be killed. That is all there was to it.

Q. Who were in the room with you when you were making this statement?

2014 A. It was just as full as it could be. I don't know who they was. The room was as full as it could be. They was crowded in there. I understood that a man to be the mayor that taken that deposition, but I don't know for a fact. I just understood he was mayor of the town.

Q. Describe, as nearly as you can, what happened to you in connection with the taking of your statement?

A. Well, that is all there was to it. They were taking that deposition there.

Q. What happened? Did you sign any paper?

A. I don't remember whether I did or not. I don't think it was finished,—I aint certain. I don't remember anything about it. I could not testify about that at all, about that statement. I was unnerved and scared and excited. I don't know whether it was finished or not. I ain't certain what was done to it. It seems like we were to go back in the afternoon and finish it up and all of the rest of the men was going to sign one, but I don't know whether it was finished or not.

Q. Was anything said to you in connection with the statement as to who started the shooting?

A. I was asked twice or maybe more, did the guards do the first shooting that morning. I didn't know who did the first shooting and I couldn't testify.

Q. You say you did not sign any statement?

A. I don't remember nothing about it, whether it was signed or not. I tell you I don't remember.

Q. Did you read over any statement?

2015 A. I never read nothing. As I remember, I told about what I am telling now. I told how come me to be there—

Q. Had you finished what you were going to say?

A. Yes.

Q. When you were in the house, was anybody standing guard over you?

A. We was guarding all night, people stayed at the door all night each night we were there.

Q. Did they have guns?

A. I don't remember whether they had guns or not.

Q. Do you remember anybody who was your guard?

A. A man by the name of Pattie stayed the last night.

Q. The same Pattie you have spoken of?

A. Yes, I don't know his given name.

Q. Was anything said there about Mr. Thomas?

A. Why, yes, I heard a good deal said about Mr. Thomas.

Q. By these men that were guarding you?

A. I don't know that it was by them, but it was by the men that came in the house. The house was full of men. There had to be someone to keep them away from us.

Q. What about Thomas?

A. I heard a lot of men say he ought to be killed because he went out there the second time and brought men into that place down there, Prairie Creek. I heard it several times but I don't know who said it. It was a stranger to them.

Q. Did they say anything to you there as to why—as to the reason for all of this trouble?

2016 A. They told me the reason about me. They told me I had ruined Tennessee and came down to Arkansas to ruin it, that the open shop workers had ruined that country and came down here to ruin this country.

Q. Then on Sunday morning they sent you back on the train, the whole guard?

A. I went to Coal Creek or started for there Sunday morning.

Cross-Examination

By Mr. Warrum:

Q. Did they raise money for you to go back to Coal Creek, Mr. Johnson?

A. I could not say where the money came from. Someone got us tickets, I don't know who furnished them.

Q. What was the name of the man you understood to be mayor? A. Which?

Q. The man that you understood to be the mayor of Hartford? A. I don't know what his name was at all.

Q. Was he over when your statement was being taken?

A. In the room there?

Q. Yes?

A. Yes, sir, I think he was. I ain't certain he was the mayor, but from what I heard said.

Q. He was there when your statements were being taken?

A. I think so.

Q. Did he threaten you?

A. I don't know. He was asking questions, but I don't know whether it was him or not.

Q. Do you know anyone else when your statements were being taken? A. No sir, I don't know any of them.

2017 Q. And you don't know who raised the money?

A. No, I don't know.

Q. Did you strike up an acquaintance with Pattie and tell him that you knew his father back in Tennessee and had worked for him?

A. Yes, sir, I told him that I knew his father in Tennessee years before that.

Q. What did he say?

A. I don't know what he said. He didn't say anything in particular.

Q. Did he curse and abuse you then?

A. Pattie never said anything to me.

Q. He never said a word to you? A. He talked to me.

Q. How did he talk to you, Mr. Johnson?

A. Just in a common conversation about the past, what he had [seed].

Q. Did he talk to you of Tennessee?

A. Yes, and Alabama.

Q. Did you meet a Mr. McDaniels there, too?

A. I don't know; if I did I didn't know him.

Q. Do you know the circumstances of Mr. Daugherty going with McDaniels or Mr. McDonald?

A. Yes, they went away and stayed all night in company with each other.

Q. Did you talk with the gentleman he went with?

A. I ain't certain.

Q. Did you hear those two people talking together, Mr. Daugherty and Mr. McDonald?

A. No, sir, I don't think I was there when they went away. They went and stayed all night and came back the next

2018 morning. I didn't know that man.

Redirect Examination

By Mr. Drinker:

Q. Were you in a calm condition during this time?

A. Sir?

Q. Were you in a calm and cool frame of mind during this time? A. When?

Q. When you were in the building.

A. I was badly excited; I wouldn't go through that again for that whole mine out there. I don't want any more experience like that, and I ain't going to have any more experience like that, and I don't want any more of it.

Recross Examination

By Mr. Warrum:

Q. Is that the reason you joined the Salvation Army?

A. No sir, that is not the reason—I ain't joined the Salvation Army; I am just working for them in the industrial department.

(Witness Excused)

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Mr. Lucas: We offer the testimony of A. F. CHITWOOD, found on pages 1821 to 1824, of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the
2019 evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

Q. What is your full name, Mr. Chitwood?

A. A. M. Chitwood.

Q. Where do you live?

A. I live at Atoka, Oklahoma, now.

Q. Where were you living in 1914? July?

A. In Fort Smith.

Q. Were you appointed a United States Deputy Marshal sometime in June? A. Yes sir.

Q. What were your duties?

A. Well, as I understood them they were to go down and kind of keep peace at a mine down here in Sebastian County.

Q. Did you go down there? A. Yes, sir.

Q. What, if any, difficulty did you encounter in securing board and room down there?

A. Well, we didn't get any except at the Company.

Q. You could not find anyone that would take you in?

A. Yes, sir.

Q. Did you make efforts to do that? A. Yes, sir.

Q. In what town? A. In Prairie Creek.

2020 Q. Do you remember, Mr. Chitwood, the occasion of a man being brought in there by the name of Nick Berkell, one evening about July 5th or 6th? A. Yes, sir.

Q. Will you state what occurred on that evening, what you saw in that connection?

A. I don't know the time of day, I don't remember just what time, but it was after dark.

Q. You were serving as United States Marshal at that time?

A. Yes, sir. He was brought in there and there was quite a crowd gathered, and after some time—after a little bit at least, the crowd was sent back home again, kind of on the outlook and he was left in there with me.

Q. Who left him with you?

A. Well, the crowd left him with me. Mr. Holt told me to see that he was not abused.

Q. Who was Mr. Holt? A. A marshal.

Q. J. L. Holt? A. I don't recollect.

Q. Jim Holt? A. Yes, sir

Q. Now, state just exactly what Mr. Holt said to you.

A. I don't remember that I can tell you exactly what he said, but I can tell you as I remember it.

Q. That is all I want.

A. As I remember, after this man was brought in
2021 there, and the crowd, Holt kind of drove the crowd out, or ordered them out, and they kind of looked to him as one in authority, and they went out, and he and his man got into a little conversation. This man recognized Holt, he had met him before, and Holt remembered him, and he stated to this man "You stay here with this man", and after he started away he came back to me and said, "Don't let anybody abuse this man."

Q. And what did you do then?

A. Well, after a little bit I went from where I was at that time to a tent where I stayed, and this man went with me, and stayed at the tent with me.

Q. Did you sit there in front of the tent with him for some time? A. Yes, sir.

Q. State what, if any, conversation you had while sitting there in front of the tent with him?

A. I don't remember all the conversation, but we talked while sitting there.

Q. How long did you sit there with him?

A. I cannot tell you how long that was, but it was during the time that the crowd was off to receive the attack; they expected an attack.

Q. What did Berkell say to you about an attack, if anything?

A. In our conversation, he told me that he saw, or heard a bunch of men above him on the hill, and said that they were from the inside there, and I told him I didn't think they were, that I didn't think the men were out, that I didn't know
2022 of it, and he said if they were union men, I expect, I don't remember the words he used, but I expect that I impressed him with the idea that they were union men coming to attack, that was what he thought, that was the view I had, and I allow that I impressed to him that way.

Q. What did he say about that?

A. He said if they were union men that he heard out there that place would be torn up in a few minutes.

Q. Did he say anything about where he wanted to go or to get out of the way of that attack?

A. Yes, sir, after he had expressed himself that way, there was a low place there by the tent, and he said if they commenced anything "I will get in there". There was a rather low place right close to where we were sitting.

Q. How long did you set there with him?

A. I don't remember how long, I couldn't say.

Q. What was the last you saw of him that night?

A. He was still there when I went to bed.

Q. In front of your tent?

A. Yes, sir, out a little ways in front.

Q. Where did you see him the next morning, if you saw him?

A. He was still out in front of the tent, a little ways asleep.

Q. How far from the tent?

A. I can't remember, maybe twenty-five, twenty or twenty-five feet.

Q. And who, if anyone else, was around there anywhere near him?

A. There was a man off to my right from him, I don't remember just how far. A man that I thought was
2023 Charley Cheek, but I don't know whether it was or not.

Q. How far was he from Berkell?

A. Fifteen or twenty feet.

Q. Was he also asleep? A. Yes, sir, he was asleep.

Q. As far as you saw anything that night, Mr. Chitwood, you did not see or hear of Nick Berkell sitting there, or lying there inside or outside of a tent, and being punched in the ribs with a gun by Charley Cheek? A. I never heard of it.

Cross-Examination

By Mr. Covington:

Q. Mr. Chitwood, what were your duties down there as United States Marshal?

A. As I understood it, I stated before, as I understood it, it was kind of to look after the injunction, and prevail with the people to obey the orders of the Court.

Q. Now, you say Holt, Jim Holt, turner this man Berkell over to you?

A. I don't know that you would call it turned over. They came in there with him, the crowd gathered in, and when I went up to where they was, I was not with the crowd when they came in, but when I went up to where they was, pretty soon after I went up, Holt ordered the men out that were on the inside, and most of them went out and went back.

Q. How many were in the tent at that time?

A. In the tent?

Q. Yes?

2024 A. They were not in the tent.

Q. Where were they? A. In front of the store.

Q. In front of the store? About how many were gathered around Berkell?

A. As well as I remember there must have been thirty or forty men.

Q. Armed? A. Some of them were.

Q. Most of them?

A. Yes sir, I expect most of them were.

Q. Mr. Chitwood, what did you hold Berkell for, what were you sitting down there holding him for?

A. As I understood I was keeping him there to keep him from being abused.

Q. Then you were just keeping him there to keep him from being abused? A. That is the way I understood it.

Q. There were no men abusing him?

A. There was not just then, but the conversation that happened just before that signified that there was some chance they might do it if they had a chance.

Redirect Examination

By Mr. Hull:

Q. The telephone had been cut that night?

A. Just a few minutes before.

Q. A few minutes before he was brought in? A. Yes sir.

Q. How old are you, Mr. Chitwood?

2025 A. 73 years old.

Q. 72? A. 73.

(Witness excused.)

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Mr. Lucas: We offer the testimony of E. G. CASTELL, found on pages 1826 to 1828, of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Direct Examination.

By Mr. Hull:

Q. State your name? A. E. G. Castell.

Q. What is your present position?

A. I am agent for the Frisco at Huntington.

Q. Have you, in response to a subpoena duces tecum, produced here this morning some records of your company, showing whether or not the mines under control worked on April 6th and July 17th?

A. Yes, sir, I have the records.

2026 Q. These records are kept under your control and custody? A. Yes, sir.

Q. Will you state whether or not Nos. 3, 5 and 6 Central and the Cross mines worked on April 6th?

A. No, sir, they didn't work.

Q. Do your records show why they didn't work?

A. Yes, sir.

Q. Why?

A. Account of miners' demonstration, the record shows.

Q. Will you turn to your records of July 17th, and state whether or not No. 2 worked that day?

A. The 17th,—No. 2 worked two hours and lost six.

Q. Does it state why?

A. The men came out.

Q. State whether or not No. 3 and 6 worked that day?

A. They did not work.

Q. Why not? A. No men.

Q. No men? A. No, sir.

Q. Were those mines that you have referred to union mines? A. Yes, sir.

Q. Did you bill the coal, I believe as a part of your duties, out from the Coronado mine, did you not?

A. Yes sir.

Q. That was one of the Bache-Denman mines?

A. Yes, sir.

Q. Can you state, giving the best of your recollection, what percentage of Coal shipped by the Coronado Coal Com-
2027 pany went into interestate commerce?

A. Well, practically all of it.

Q. You state that you billed the Coronado shipments out over your lines? A. Yes, sir.

Q. Will you state what per cent of that coal which you billed went outside of the state of Arkansas?

A. Well, you see,—

Cross-Examination

By Mr. Covington:

Q. Have you your car sheet showing the number of cars furnished to these mines each day?

A. Yes, sir, this record here shows that.

Q. And when there were no cars you assign the same reason on your sheet that you have there?

A. There are two causes for mines not working. This report shows. You can examine the record, if you want to, or I can explain it to you better. It is a cipher report. It is a telegraphic report, and made in cipher to shorter it. Now, here is two columns, "Hours lost by shutdown", and the

cipher for want of cars is "AR", and the cipher for other causes, is, "RA", and both of April 6th and July 17th, the causes were not for cars, but for other causes, and they were here recorded in the remarks column.

Q. Now, between those dates,—

The Court: Let him finsh.

A. I say this report is made in cipher, it is a telegraphic report,—

2028 and when the mines are idle for want of cars, it shows under the cipher "AR", and when they are idle for other causes, it comes under the cipher "RA", and on April 6th the mines, all of the mines were idle for other causes, which is "RA", and on July 17th it is the same.

Q. Where do you get your information on which you base that cipher record?

A. Well, it was made in a measure from what is called the operators' 5 P. M. report. They give us the number of cars loaded, and the tonnage, and the cause of the mine being idle.

Q. And you transcribe that into the record?

A. Yes, sir, part of that. The Operators' 5 P. M. report. This report is made in a measure from the Operators' 5 P. M. Report.

Q. Did you make that record?

A. No, I didn't make it personally, the clerk made it.

Q. You didn't make it? A. No, sir.

(Witness excused.)

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Mr. Lucas: We offer the testimony of D. Van Hecke, found on page 1829, of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason

2029 that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of the plaintiffs on any issue in this case.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Direct Examination.

By Mr. Hull:

Q. State your full name?

A. D. Van Hecke.

Q. What is your present position?

A. Superintendent of the Rock Island Railroad.

Q. With offices at Haileyville?

A. Haileyville, Oklahoma, yes, sir.

Q. Have you, in response to a subpoena duces tecum, produced records of your company, showing whether or not the mines located on the lines of the Rock Island worked on April 6th and 17th?

A. I have.

Q. Will you state whether or not on April 6th Central No. 4 and the Bolen mine and Slankard mine and Harbuckle mine worked? A. They did not.

Q. Can you state whether the record shows on what account they did not work?

A. Other causes than for cars.

Q. And is there any notation there to show further why it was? A. No men.

Q. Referring to July 17th, will you state whether those 2030 same four mines worked?

A. They did not.

Q. And is there anything in the record showing why not?

A. Causes other than for cars, and in the margin the notation "Labor Trouble".

Q. Were all those four mines union mines?

A. I don't know.

Q. You don't know whether they were operated with union labor or not? A. No, sir.

Q. Do you know as to any of them, whether they were or not? A. No, I do not.

(Witness excused.)

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Mr. Lucas: We next offer the testimony of J. N. Hamilton, found on pages 1832 and 1833 of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will

not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of [the,] at the time duly excepted and
2031 still except.

Direct Examination

By Mr. Hull:

Q. Your name is? A. J. N. Hamilton.

Q. Where do you live?

A. My family lives here, I am at Salisaw, at present.

Q. Oklahoma? A. Yes, sir.

Q. Were you employed at the Bache-Denman mine in July, 1914? A. Yes, sir.

Q. And again in October? A. Yes sir.

Q. Now referring to the 6th day of July, do you remember the time when a man named Nick Berkell was brought into camp? A. Yes, sir.

Q. Will you state where you were stationed that night?

A. Yes, sir, watchman at the front.

Q. At the front gate? A. Yes, sir.

Q. State what occurred with relation to some shooting, and your part in it.

A. Well, as well as I remember, there were two of the guards sent out to guard a telephone pole, and while they were out there there was a bunch of men came up on the railroad, right close to my station, and began firing over at the camp.

Q. That was No. 4?

A. No. 4; and I opened up on them.

Q. You shot?

A. About a couple of times.

2032 Q. What were you shooting at?

A. I was shooting at the bunch, from the flame of their guns.

Q. Did Langford come out there soon after that?

A. Yes, sir.

Q. You shot twice, you say?

A. Yes sir.

Q. Did Langford tell you not to do any more shooting?

A. Mr. Langford came out to me and said. "Be careful, there are some of our men out", and I told him I knew that.

Q. Do you know how soon after that Nick Berkell was brought into camp?

A. I suppose about 15 minutes.

Q. How many men were there in this crowd that you saw out there that did the shooting?

A. I can't tell, but it looked like a pretty good bunch, 10 or 12

Cross-Examination

By Mr Covington:

Q. When you were shooting into that crowd, Mr. Langford came down and told you not to be shooting into that crowd out there, that that was his own men?

A. No, sir, he didn't tell me that, he said to be careful, we had some men out.

Q. But you were shooting in that direction, and he came out and told you to be careful?

A. No, he didn't tell me that, he said to be careful.

Q. He did tell you to be careful?

A. Yes, sir.

(Witness excused.)

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2033 Mr. Lucas: We offer the testimony of HILBERT STROUPE found on pages 1888 to 1897, inclusive, of the former record.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the [sitness] is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

Q. What is your full name? A. Hilbert Stroupe.

Q. Where do you live, Mr. Stroupe?

A. I live at Franklin, Kansas.

Q. You are here in response to my request to come here and testify? A. Yes, sir.

Q. I saw you last night, didn't I, Mr. Stroupe?

A. Yes, sir.

Q. At your home? A. Yes, sir.

Q. And asked you to come over here and testify?

A. Yes, sir.

Q. And did I pay you, in advance, your mileage?
2034 A. Yes, sir.
Q. And the per diem, that is, your witness fee?
A. Yes, sir.
Q. State, please, how much I paid you?
A. Paid me $5.25.
Q. And that was as I explained to you?
A. You didn't have the change.
Q. That was, as I explained to you, $3.70, or ten cents a mile for the thirty-seven miles, and $1.50 for the witness fee?
A. Yes, sir.
Q. And we couldn't make change, so instead of $5.20, I left $5.25? A. Yes, sir.
Q. Did you live in Hartford, Arkansas, in the spring and summer of 1914? A. Yes, sir.
Q. What was your business there?
A. I worked in the mines and worked on a farm.
Q. Did you have any other vocation? A. Yes, sir.
Q. What was it? A. I was a minister.
Q. Preaching in Hartford?
A. Yes, sir, preached there sometimes; most of the time was away; would go out of town, sometimes different places and different states.
Q. How long had you lived at Hartford prior to that time?
A. I moved to Hartford, if my memory serves me right, the 7th of August, twelve or thirteen years ago.
2035 Q. In what mine had you worked in Hartford?
A. I worked in the Huffman mine, which was known as Mine Number 7 after the Central got it; worked in the Mammoth Vein; worked in Prairie Creek No. 4; worked at McKinney mine, the Central Coal Company's No. 10, and at the Hart mine.
Q. Were you working at the mines on the 16th, and 17th, of July 1914? A. No, sir.
Q. How long before that had you worked in the mines?
A. Had not worked any since along in the spring.
Q. Were you a member of the union at that time?
A. I think I was, yes, sir.
Q. How long had you been a member?
A. I had been a member of the union for about fourteen years, fifteen.
Q. Are you a member of the union now? A. Yes, sir.
Q. Do you remember the time of the so-called battle at Prairie Creek? A. Yes, sir.
Q. Did you go out to the scene of the battle on the morning that it took place?

A. No, sir, never went anywhere about where the battle was at.

Q. State where you did go in reference to the battle?

A. First, in the morning I was in the field; didn't know anything about the battle until I saw some smoke; I had went down town and taken some vegetables down there, and I said, What was the matter? And they said "Some fighting out there."

Q. What time in the morning was it?

2036 A. If I am not mistaken, it was in the neighborhood of ten o'clock and something was said about the women and children out there.

Q. What women and children?

A. Those people that was working there at this mine.

Q. That was working at the non-union mine?

A. The men that were working at the mine.

Q. The families of the non-union miners?

A. Yes, sir, and Mr. Conway said that they ought to be looked after.

Q. Who was Mr. Conway?

A. The Mayor of the town; and I went and got my brother and got John Stevens; he says, "We are going out there to look after those women and children." And we picked up another fellow by the name of Pattie; we took him and went out and hitched my mules in Frogtown.

Q. What time did you get to Frogtown?

A. We got to Frogtown, if my memory serves me right, about half-past ten o'clock, or eleven, something like that.

Q. Had you heard any shooting up to that time?

A. Not until I began to get out; I could hear a few shots after I had got about even with No. 7 Central, there.

Q. How far was that from Frogtown?

A. That was half a mile this side, between a half and a mile; I don't think it was three-quarters.

Q. How far was Frogtown from No. 4?

A. I would call it about a mile and a quarter.

Q. And in what direction from No. 4?

A. Northeast, I think.

Q. State what you did after you hitched your mules up in Frogtown?

2037 A. Went on up the hill and where the road turned off there at those mail-boxes, and we passed along right where the company store used to be, and the house that Mr. Argo lived in; he was the bookkeeper for the Mammoth Vein; it was burned down, and we went on to the tipple.

Q. What tipple?

A. Number 3 tipple. And we passed on by that and instead of going up by No. 3 camp, we took right up the edge of the ridge.

Q. To what side of No. 3 camp were you?

A. I was to the right, south.

Q. On the edge of No. 3 camp?

A. Yes, sir, and while we was going up there, you could hear a few shots once in a while, maybe a dozen, and then they would stop a while. Mr. E. C. Green came to me and said he—

Q. Don't state what you heard. As a result of what Mr. Green said to you, what did you do?

A. I don't know whether I can tell that.

Mr. Covington objects to what Mr. Green said to the witness.

Q. You met Mr. Green? A. Yes, sir.

Q. And as a result of what he said, I ask you to tell me what you did?

A. Mr. Covington objects to the question."

The Court: The objection is overruled.

A. I went on up there and waited; there was a path that goes from the bottom, from where the "Goo-Goo Eye" is. Mr. Green—I had taken him with me—I says, "You go on up there and you get those folks; that woman is fainting up there you say?" I says, "You come back here with
2038 them," And we staid up there something like an hour.

Q. You staid at the "Goo-Goo Eyes" fan-house?

A. No, sir, at the edge of this cliff.

Q. Who did he bring with him?

A. About twenty-two people, and one of the women was in a critical condition.

Q. Do you remember the names of any of these people?

A. Well, as I remember there was one old man by the name of Johnson, and two boys, Daugherty.

Q. Do you remember the names of any of the women?

A. No, sir, there was some children belonging to Mr. Owens, Scaley Owens.

Q. Was his wife there? A. No, sir.

Q. What did you do with those people?

A. Put them in a hack and took them to Hartford to take care of them.

Q. How many did you put in the hack?

A. Took six women and some little children.

Q. What did you do after you went to Hartford?

A. Took them to a place down there and provided them tubs in which to take baths, and got them clothes.

Q. Did you pass anyone on the road, either going to No. 3 or coming back? A. Yes, sir.
Q. Who did you pass? A. Don't know.
Q. How many people? A. A good many.
2039 Q. Roughly estimating, how many people were on the public road?
A. I couldn't do that; I don't know.
Q. Give your best recollection, your best judgment.
A. Probably 35 or 40 people.
Q. See any men with guns?
A. No, sir, none that was going.
Q. Did you see any men with guns that were staying?
A. No, sir.
Q. Did you see anybody with guns at all?
A. Only that morning, in the field.
Q. Where did you see them?
A. They was some Italians, I took them to be.
Q. How many were there? A. Four or five.
Q. Which way were they going?
A. Going towards Prairie Creek.
Q. That was in your own field, near your house?
A. About a quarter from my house?
Q. How far was your field from No. 4?
A. About, I expect, in the neighborhood of three miles.
Q. What time of day was that?
A. That was about eight o'clock as well as I remember.
Q. What kind of guns, if you know? A. Don't know.
Q. You know the difference between a shot gun and a high power rifle?
A. That was so far away I couldn't tell.
Q. This shooting that you heard, are you sufficiently familiar with the sound of guns to know whether it was
2040 from high power rifles, or shot guns?
A. No, sir, didn't pay no attention to that.
Q. You spoke a moment ago, of seeing some smoke, was that from No. 3 tipple? A. I suppose.
Q. You went by No. 3 tipple, didn't you?
A. Yes, sir.
Q. Was it burning? A. It was burned down.
Q. It was smoldering when you went by it?
A. Yes, sir.
Q. Pretty well burned up?
A. It was burned down, as well as I remember.
Q. That is, still burning, smoldering? A. Yes, sir.
Q. Argo, you say, was the bookkeeper for the Bache-Denman Company? A. Yes, sir.

Q. Now getting back to Hartford, what do you say you did for those women and children?

A. We took them down there and got a doctor for this woman and some beds, and appointed a committee and got some wash tubs and went out and got some clothes.

Q. Do you remember who was on that committee?

A. This West's druggist's wife, I think, was one of them.

Q. What did that committee do?

A. Some of those women came in there; of course I wasn't back there, I couldn't tell. The children came out with clean clothes.

2041 Q. Do you know how much money was taken up?

A. No, I don't. I think the town bought their tickets; gave them $167.00 something like that.

Q. Tickets to where?

A. Somewhere in Tennessee.

Q. When did the women and children leave?

A. I think it was Saturday night.

Q. Did these men, these Daugherty's go at the same time?

A. Yes, sir.

Q. Were their depositions taken before they went?

A. Mayor took some deposition, Mayor Conway.

Q. Where were they taken? A. There.

Q. Do you know who was present when they were taken?

A. No, sir.

Q. Do you know who the notary public was?

A. No, sir, I don't know which one he had.

Q. Ever seen those depositions? A. No, sir.

Q. When you were up there close to Number 3 Camp, was there firing going on at that time, shooting?

A. When we was coming back there was.

Q. About what time did you go back?

A. Little after 12:00.

Q. Where was that shooting going on?

A. Down towards Prairie Creek, on the other side there.

Q. Did you see the smoke from any guns?

2042 A. No, sir.

Q. Just heard the shooting?

A. Just heard the shooting.

Q. Didn't you see any men shooting at all?

A. No, sir, I was fully three quarters of a mile from there and there was timber there.

Q. Could you tell where the shooting was coming from or going to? A. No, sir.

Q. As you went away from Number 3, did you see any men with guns? A. No, sir.

Q. Did you meet any people?
A. I met people as I came through Frog Town, going out there.
Q. Did you go through Prairie Creek Camp?
A. No, sir.
Q. How many shots do you suppose you heard while you were there at Number 3 Camp? A. I don't know.
Q. Roughly estimate the number.
A. I wouldn't know how to begin; there was a good many shots fired right along about 12:00 o'clock.
Q. For how long did that shooting last?
A. Oh, fifteen or twenty minutes.
Q. Pretty continuous for fifteen or twenty minutes, was it? A. Yes, sir.
2043 Q. Would you say there was a dozen shots, or how many, roughly?
A. Oh, I don't know how many was fired, I can't tell.
Q. Were they fired in volleys, or singly?
A. Went like rifles a cracking, is all I know about it; one after another, for as much as ten or fifteen minutes.
Q. Who went over there with you, you say?
A. My brother and Mr. Pattie.
Q. Did you meet anyone else there that day?
A. No, sir, never paid any attention; just went out there.
Q. In the few days preceding the battle, Mr. Stroupe, did you attend any mass meetings? A. I went to one.
Q. Where was that?
A. That was just below my house; it was what was called the park where they held their picnics.
Q. Picnic ground? A. Yes, sir.
Q. Is that across the road from the ball grounds?
A. Yes, sir.
Q. Across the track? A. Yes, sir.
Q. What day was that meeting held?
A. I don't know; either Monday or Tuesday; it lasted maybe five or ten minutes.
Q. If the battle was on Friday, this was the Monday or Tuesday before the battle?
2044 A. Something like that.
Q. What happened at that meeting? What did you see?
A. I never heard anything, only there was one man got up and said something about Frogtown being shot up.
Q. Who was that man?
A. Graham, I believe, was his name; and just about that time somebody came and said they wanted the chairman of the meeting at the phone; he said that the president of the

district, Mr. Pete Stewart, or the Secretary of the district, wanted him at the phone; he went to the phone and came back and said, "We will dispense with this meeting at once," and they adjourned the meeting.

Q. Do you know who was the chairman of that meeting?

A. Jim McNamara.

Q. Did he say what the message was, over the telephone?

A. He never said a word, only they would dispense with that meeting, it might cause some trouble, and not to hold a meeting at all.

Q. McNamara said that? A. Yes, sir.

Q. Did he say he had heard that advise from Mr. Stewart?

A. Yes, sir, I believe it was; and the meeting adjourned right then.

Q. Was Pete Graham the only man you heard make any speech?

A. Yes, sir, but it seems to me like there was a one-eyed man got up and said something.

2045 Q. What is your best recollection of what Graham said?

A. He told us about the place being shot up and he said he thought booze was the cause of the whole business; that these fellows had been buying booze of the Italian women near there, and the women had went to them and told them not to sell them any more booze.

Q. Who told them that?

A. Some these people went to this woman and told them not to sell any more booze or they might come down there and cause trouble; so they came back and they wouldn't let them have it.

Q. Are you stating now what you know, or what you have heard?

A. Just what I heard; you asked me what he said.

Q. If that is what he said.

A. That is what he said at the meeting.

Q. What did Mr. Graham suggest, if he made any suggestion, as to what should be done?

A. He never made any suggestion at all, because he was a good straight man.

Q. Did you hear any suggestions made at that meeting as to what should be done?

A. No, sir.

Q. When did you hear about the meeting?

A. I seen the people gathering from my house.

Q. That was the first you knew about it?

A. Yes, sir.
2046 Q. You know who called the meeting?
A. No, sir.
Q. How many were there? A. A good big crowd.
Q. About how many? A. I suppose 200 or 300.
Q. Without stating the names, who were they; who made up the crowd?
A. I couldn't tell you; some I didn't know and some that I knew.
Q. Did you see some miners there?
A. Yes, sir, I saw some miners; made up of miners.

Mr. Covington: We waive the cross-examination.

Mr. Hull: If I remember, there is just one question and answer that I want to read of the cross-examination. It is the last question on page 147. (Reading):

"Counsel has questioned you particularly about your connection with the trouble at Prairie Creek Number 4, alleged to have occurred on July 17, 1914, asked you all you did, who you saw on that day, what was said, and your action in taking the women out of the non-union camp at Prairie Creek; of you had been engaged in a [carrer] of murder and burning of property, was there anything to hinder you murdering the women and children you took out of there that day?

A. No, sir.
2047 Q. Was there anything to hinder you killing the men that you took away from there? A. No, sir.
Q. Were you armed? A. Yes, sir, taking a shot gun.
Q. Taking a shot gun? A. Yes, sir.
Q. Along in your wagon? A. Yes, sir.
Q. Brought them out? A. Yes, sir.
Q. Was there anyone interfered with you to keep you from killing them? A. No, sir, none at all."

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Mr. Lucas: We offer the testimony of HOWARD H. REDNER found on page 1912 to 1914, inclusive and 1918 to 1919, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony an dextracts from the former record of the [wirness] named for the reason that under the ruling of the Supreme Court the evi-

dence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

2048 To which ruling and action of the court the defendants at the time duly excetped and still except.

Direct Examination

By Mr. Hull:

"Q. What is your full name?

A. Howard H. Redner.

Q. What is your profession? A. A Photographer.

Q. Will you speak so we can all hear you, and save a lot of time. Were you in the photograph business in Fort Smith until recently? A. I was.

Q. You are now doing some business for the government in cantonments? A. Yes, sir.

Q. You were in business in Fort Smith in 1913 and 1914?

A. Yes, sir.

Q. Did you, at the request of Bache & Denman, some time in 1913, take some pictures of their mining property down in the vicinity of Prairie Creek? A. November 19, 1913.

Q. I show you some photographs, and ask that they be marked Plaintiffs Exhibit 62 to 68 inclusive, and I will ask you if Plaintiffs Exhibits 62 to 68 inclusive, are prints made from the negatives which you exposed on that date.

2049 A. They are.

Q. Referring to Plaintiff's Exhibit 67, I will ask you if you know what that mine is? A. Mammoth Vein.

Q. Is that Mammoth Vein No. 6, do you know?

A. That is not No. 6.

Q. If you know what it is—is it Mammoth Vein No. 1?

A. I just heard it called Mammoth Vein.

Q. I think we will identify that more clearly in a moment. Referring to Plaintiffs Exhibit 66, will you state whether or not that is a picture of the Dallas Mine?

A. I have heard it spoken of as such.

Q. You have heard it called the Dallas Mine?

A. Yes, sir.

Q. Referring to Plaintiffs Exhibit 65, I will ask you—do you know of whom that picture is, that man standing in that picture? A. Mr. Denman.

Q. I will ask you if you know where that picture was taken?

A. This picture was made in what they call Mammoth Vein.

Q. Mammoth Vein No. 1?
A. I can't say about the number.
Q. That was taken underground? A. Yes, sir.
Q. By flashlight? A. Yes, sir.
2050 Q. Referring to Plaintiffs Exhibit 64, I will ask if that is a picture of Mine No. 6? A. That is.
Q. Referring to Plaintiffs Exhibit 63, I will ask you if that is a picture of the Rock Island tipple at Mammoth Vein No. 1? A. It is.
Q. Referring to Plaintiffs Exhibit 62 I will ask you if that is a picture of Coronado mine? A. It is.
Q. Referring to Plaintiffs Exhibit 68 I will ask you if that is a picture of No. 4 Prairie Creek? A. Yes, sir.
Q. Mr. Redner, did you at my request have an enlargement made of these pictures? A. I did.
Q. I will ask if these six enlargements are here marked by the reporter Exhibits 69 to 75 inclusive, referring to Plaintiffs Exhibit 69 to 75 inclusive, I will ask you what you did, Mr. Redner, in connection with having those enlargements made?
A. In what way do you mean?
Q. To get at this as directly as possible; didn't you send these negatives or positive prints of these pictures, as to which you have just testified, to Kansas City, and ask that enlargements be made? A. I did.
2051 Q. And those are the enlargements that came back?
A. Yes, sir.
Q. And they are enlargements of the seven pictures that we have just introduced, the small print that has been introduced, with the exception of Mine No. 6? A. Yes, sir.
"Q. Mr. Redner, when did you make these photographs, these exhibits which you have identified? A. Which ones?
Q. All of them, any of them. A. At different times.
Q. When?
A. November 19, 1913; March 15, 1917; May 7, 1917; and June 27, 1917.
Q. You made the first photograph in March or November?
A. November 19th, 1913.
Q. November 19, 1913? A. Yes, sir.
Q. Now, does that include the first exhibits presented to you, the ones you made in November 1913?
A. Yes, sir, those large eight by ten square pictures showing the mine property intact. That was made November 19, 1913.
Q. At whose instance did you make them?
A. Bache-Denman Coal Company.

Q. Who, what party connected with the Bache-Denman Coal Company? A. Mr. Bache and Mr. Denman.
2052 Q. Mr. Bache and Mr. Denman? A. Yes, sir."

Witness Excused.

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Mr. Lucas: We offer the testimony of RUFUS H. LAMB at the former trial, found on pages 1914 to 1918 inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

"Q. What is your full name? A. Rufus H. Lamb.
Q. You are a photographer here in Fort Smith?
A. Yes, sir.
Q. Were you a photographer here in 1914, in July?
A. Yes, sir.
2053 Q. Do you remember the occasion of some mines being burned at Prairie Creek on the 17th of July, 1914?
A. Yes, sir.
Q. Did you, soon after that, in fact, on July 19th, go down and visit that scene of destruction? A. Yes, sir.
Q. I will ask that these pictures be marked by the reporter, and showing you first, Mr. Lamb, Plaintiffs Exhibits marked 76 to 91, inclusive, I will ask you if they are prints made by you from the negatives exposed by you at that time?
A. Yes, sir, they are all.
Q. And they were made on what days, if you remember?
A. Well, No. 4 was made on the 19th, and No. 3 and No. 1 Mammoth Vein were made on the 20th.
Q. Of July 1914? A. Yes, sir.
Q. I will ask you if these are pictures of the destroyed property of the Prairie Creek made at that time?

A. Yes, sir.

Q. And this shows the mines that were destroyed at that time? A. Yes, sir, as they were at that time.

Q. Mr. Lamb, I will ask you simply if the notations on the back of these photographs are in your handwriting?

A. Yes, sir.

Q. And when did you place those inscriptions on the
2054 back of those pictures?

A. I don't remember, it was some time later, it must have been six or eight months after that.

Q. But you compared them with your negatives, and the inscription on the back of those negatives state the true—

A. (Interrupting.) They were copied off of the original negatives that I made.

Q. Those inscriptions state the true character of the picture in each instance?

A. Yes, sir, so far as I know at the time.

Q. And those pictures, referring to the exhibits named, with the exception of exhibits 79, 80 and 89, which are withdrawn, do these pictures correctly represent the condition of the mines as described on the back? A. Yes, sir.

Q. I show you Plaintiffs Exhibit 93 and ask you what that print is?

A. Why, that is a print from a copy, negative of a photograph furnished by someone else. Some other fellow had made them of this mine. I didn't make any photograph of this mine.

Q. You didn't make that negative, but you made that print?

A. I made the negative that this is printed from, and also this print, but I made the negative from another photograph which was furnished me at the studio.

Q. When did you make this, if you remember?
2055 A. It was a short time after this had happened, say probably, well, I suppose it must have been within thirty days.

Q. You don't know who took this picture?

A. No, I don't know who made this picture.

Q. Who gave it to you? Who gave you the picture from which you made the negative, from which this picture was made? A. It was one of the Times-Record Employees.

Q. Do you know who it was?

A. I believe Mr. Helf, at that time."

Cross-Examination

By Mr. Covington:

"Q. Were these photographs in your possession eight months after they were taken when you made the notation referred to on the back a moment ago?

A. I didn't quite understand you.

Q. Were those photographs, in your possession eight month after they were taken when you made the notation referred to on the back, a moment ago?

A. Yes, sir, I made those notations on the back there when I delivered them.

Q. And when did you deliver them and to whom?

A. I delivered them to Mr. Bache, I don't remember the date exactly.

Q. At whose instance did you make those pictures?

A. Well, I—how come me to make the pictures at No. 4, about a week before this had happened I planned an out-
2056 ing down there with some friends from Hutington, and after this happened I just concluded I would take a camera with me and I suggested we drive over by the mines, and I made No. 4 and we came back that afternoon and I concluded Monday I would go down and make the other two mines, being I had already made the other, not knowing but what they would be of some value to me.

Q. And no one suggested that you make these pictures?

A. No, sir.

Q. You went down a day or two after each fire, and took a picture, did you?

A. Well, it was just about—the 19th was the day I went down, and it was about a week before that some friends from Huntington was up, and we planned an outing the next Sunday, and it was the Sunday after this happened that we were down."

Redirect Examination

By Mr. Hull:

"Q. And it was about eight months later, after you took them that you gave them to Mr. Bache?

A. It was some time after.

Q. Some months? A. Yes, sir.

Q. I want to ask you one other question, Mr. Lamb. Did you go down to Prairie Creek and make pictures of the destroyed mines sometime in the spring of the present year, 1917?

A. No, I was down, but however, I didn't make any pictures.

2057 Q. You were there and went all over the ground?
A. Yes, sir.

Q. Can you state, referring to these pictures of the destroyed property, whether in the spring of 1917, the mines which have been destroyed, were in substantially the same condition as they were when these pictures were taken?

A. Well, I can as to what is known to me as No. 4; No. 1 Mammoth Vein and No. 3 Prairie Creek.

Q. What is your answer?

A. As to those three, the general view there was practically the same as it was when I was down before, except No. 4, they started rebuilding it.

Q. The Central Coal and Coke Company had started to rebuild?

A. Yes, sir but the general view was practically the same."

(Witness excused.)

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Mr. Lucas: We offer the testimony of S. T. Brown at the former trial, found on pages 1699 to 1701, inclusive and 1707 to 1708, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the
2058 evidence had no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

"Q. Give your full name? A. S. T. Brown.

Q. Where do you live?

A. I am living at the present time about 35 miles from Coal.

Q. Coal? A. Yes, Coal or Cove.

Q. Is that in this state? A. No, sir, in Oklahoma.

Q. What is your occupation at the present time?

A. At the present time I am farming.
Q. You lived at Prairie Creek in 1914?
A. Yes, sir, I did.
Q. Early on the morning of July 17th state what occurred, to your knowledge?
A. The only thing I heard, the first I heard was a lot of shooting.
Q. About what time was that?
A. I taken it to be between 4:00 and 4:30.
2059 Q. Where were you living at that time, how far from No. 4?
A. I was living a little better than a quarter of a mile, right down close to a little mine called the O. Looper mine or pit.
Q. Who was running that?
A. My brother-in-law was fixing to run it then.
Q. Who is he? A. Mack Weston.
Q. Where does he live now? A. At Drumlet.
Q. Is that near Arlington? A. Yes.
Q. In the morning did some man come to you and give you some advice, during the morning of the battle?
A. I will say it was ten o'clock, probably a little later then, and some men came around the edge of the hill, I don't know how many, but something like 20—
Q. (Interrupting). Did they have guns?
A. A few of them had guns, part of them didn't. And they just made the remark to me, they said, "Brown, get them women folks and horses and get up the hollow, we are going to close in on them."
Q. Did you hear an explosion that morning?
A. I believe not.
Q. Did you see any houses burning?
2060 A. Nothing only No. 4 about twelve o'clock. I saw the tipple when it fell in, I and my brother-in-law and the boys.
Q. You say that was about twelve o'clock?
A. Yes, 12:00 or 12:30 or something like that.
Q. Had you just previous to that seen four men leave the mine?
A. Just before we walked around to see the tipple fall in Pat Molloy and three other men came up from camp and asked for a drink of water and I said, "Help yourself, boys, there is plenty of it", and they took a drink of water, and my wife, no, my sister it was, asked them if they would have something to eat and they said, "No, we will get up the line", and I think my sister gave them some biscuits and they took them

in their hands and walked on,—I am not quite sure about that but I think that is it. My brother-in-law asked how many boys were left up there at Pat Molloy made the remark, "We are the last four".

Q. How long after that was it you saw No. 4 in smoke?

A. Well, I will say it was something like an hour. We just finished up our dinner and got up and walked around there and about the time we got around there we just got around far enough to see it begin to fall in."

Redirect Examination

By Mr. Hull:

"Q. Mr. Brown, in the afternoon of the day of the battle did you assist in taking some loaded coal cars out from No. 4? A. Yes, sir.

2061 Q. About what time was that?

A. That was,—well, I will say about three o'clock, I believe it was, to the best of my recollection.

Q. How many loaded coal cars were there there?

A. There was four loaded coal cars we pulled back.

Q. Where were they?

A. They were sitting between the mine and the scale house. There was seven loaded cars all told. Three were on fire and the railroad crew ran in there and we ventured up there to see what the destruction was, and Mr. Pattie made the remark, "I wonder if there is anyone around here that can handle those cars?" And I said, "Yes, we have plenty of help, and we will handle them". And Mr. Pattie said, "I will give you five dollars a car to pull them back from there," and we ran for some horses we had down there and grabbed a snatch block and a rope and we attached the snatch block to a car, and we pulled the car six feet and then we bumped the others against them, and we saved three of the cars for Mr. Pattie.

Q. Where were the three that burned?

A. One burned up on the scale house.

Q. Did the scale house burn with it? A. Yes.

Q. While you were there?

A. It was pretty near gone when we got there, and if I am not mistaken, one car burned up just opposite that

2062 on the side track and the other was at the end of it, to the best of my recollection.

Q. That Mack Weston's horses you used?

A. Yes, sir.

Witness excused.

2063 Mr. Lucas: We will offer in evidence and consider as read, the deposition of CALVIN SAUNDERS as it appears in the record of the former trial at pages 1393 to 1402, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

Q. What is your full name?
A. William Calvin Saunders.
Q. How old are you?
A. 27 on the 3rd, day of this month.
Q. Where do you live?
A. Briceville, Tennessee.
Q. Where were you living in the spring of 1914?
A. Briceville, Tennessee.
Q. Did you go from Briceville to Ft. Smith at that time?
A. To Prairie Creek.
Q. How did you happen to go from Briceville to Prairie Creek?
A. Fellow come and took up transportation.
2064 Q. You know who he was?
A. Know he told us.
Q. Was it Eustis? A. No, sir.
Q. You don't know what the name is?
A. I saw him there again.
Q. Hackett? A. Yes, sir.
Q. How many went with you?
A. Pretty good bunch of us, Dougherty, Andrew Dougherty, and old man Johnson, Sam McKamey, and another Johnson boy, old man Johnson's boy, John Martin, I reckon that was all.
Q. What reason did they give for asking you to go to Prairie Creek, what did they want you to go there for?

A. To work.
Q. Pay your fare? A. Yes, sir.
Q. When did you get to Prairie Creek?
A. I stated on—I got there on Friday night before the 17th, of July.
Q. How long were you at Prairie Creek before the 17th?
A. From Friday night until Friday morning.
Q. A week?
A. Yes, a week. Got there on the 10th, one week before the 17th.
Q. A week before the 17th?
A. Yes, sir.
Q. Where did you go when you got to Prairie Creek?
A. Went to the camps.
Q. What place you live there?
A. Called it No. 3.
2065 Q. What was the condition of the camp at that time, how many men there?
A. Pretty good bunch.
Q. How many, do you know?
A. I don't know exactly, never counted them.
Q. About how many?
A. Up toward ninety or one hundred.
Q. Was the camp enclosed or any fence around it?
A. The camp where I was, no fence that I know of.
Q. What did you do when you got there?
A. Drove.
Q. Drove what? A. A mule in the mine.
Q. How long did you keep on doing that?
A. Three shifts and a half.
Q. How long did it take to do a shift?
A. Eight hours.
Q. See any trouble of any kind around before the 16th?
A. No, sir.
Q. What happened on the 16th?
A. Began to shoot toward what they called No. 3 tipple.
Q. What time? A. In the morning.
Q. Day before Friday anything happen?
A. No, sir.
Q. On the night of the 16th? A. No, sir.
Q. Where were you? A. In the bed asleep.
Q. What time did you wake up?
2066 A. 6:30.
Q. What woke you up?
A. Wake myself up.
Q. What happened after breakfast?
A. They went to shooting.

Q. Who? A. Don't know.
Q. You know if it was the men in the camp or somebody outside of the camp?
A. Some men down there, some guards guarding down there and a bunch of men after them and shooting both at one time.
Q. How did you happen to see that?
A. I heard the report of the gun.
Q. Know who was shooting when you heard the report of the gun? A. Yes, sir.
Q. What did you do? A. Broke to run
Q. Where did you go?
A. Across the hill.
Q. About how far did you go?
A. 150 to 200 yards.
Q. What time was it then?
A. 7:30 or 8 o'clock.
Q. Where did you go then?
A. Stayed in the cliff about one hour or hour and a half.
Q. Who was with you? A. My wife is all.
Q. See any other people there?
A. Didn't see any guns fired.
Q. See any people from where you were?
2067 A. No, sir.
Q. See any at all? A. No, sir.
Q. Didn't you look around from where you was?
A. Didn't see any at all.
Q. Didn't see any guns? A. No, sir.
Q. When was the first time you [say] any?
A. When I went away from the cliff across the public road and went to a little field to a house.
Q. What did you see there?
A. Saw two men standing there in the yard.
Q. When you were in the cliff did you look around over the country at all? A. Yes, sir.
Q. See any smoke?
A. Yes, back over toward the camp from there.
Q. You know where No. 3 tipple was?
A. No, sir, not down there.
Q. Know where it was from where you were, could you see it? A. No, sir.
Q. Could you see it? A. No, sir.
Q. See smoke from that direction?
A. Yes, sir.
Q. See any men? A. No, sir.
Q. Didn't see any men around there at all?
A. No, sir.

Q. When you went down there and saw the two men in
2068 the road, know who they were?
A. Didn't see them in the road, saw them at the house.
Q. Did you have any talk with them?
A. Yes, sir.
Q. Who were they? A. Don't know.
Q. Any other men join them?
A. Two fellows come up after stood there a minute or two.
Q. Two fellows you saw have guns with them?
A. No, sir.
Q. Other two have guns? A. Yes, sir.
Q. You know them? A. No, sir.
Q. Say anything to you?
A. Asked what I was doing there.
Q. What did you say?
A. Been over there on tramp.
Q. Tell what else they said to you if anything?
A. About all they said, I asked them how to get to Mansfield.
Q. Did they ask you anything about what was going [—] at the camp? A. How it was fixed for fighting.
Q. [Qho]? A. Company, I reckon what they meant.
Q. What did you tell them?
A. I didn't say anything and asked me again if they had any guns and what kind.
Q. What did you say?
A. Had some thirty thirties over there
Q. What else did they ask you?
2069 A. Asked if they had any pits dug.
Q. What did you tell them?
A. Not as I know of
Q. Then what did you do?
A. Went to Mansfield.
Q. Walk you and your wife?
A. Yes, sir.
Q. Your wife in Briceville now?
A. Not as I know of.
Q. Know where she is? A. No, sir.
Q. How long has she been gone from Briceville?
A. About 18 months.
Q. When you were going to Mansfield, see any men?
A. I met two fellows in the road I know and two fellows one named Brown, other fellow I don't know.
Q. They have guns? A. No, sir.

Q. They been working for the company while you were there? A. Yes, sir.
Q. Where did you go with them? A. Mansfield.
Q. From there? A. To Fort Smith.
Q. Then where did you go?
A. Home, to Jamestown.
Q. Then where did you go?
A. Blackwell.
Q. Hear any shooting that morning while you were in the cliff?
2070 A. Yes, sir.
Q. Much or little? A. Right smart.
Q. How many shots were fired, about?
A. Never counted them.
Q. One hundred or one thousand.
A. Couldn't tell, good many shots.
Q. Nearer one thousand than one hundred.
A. Couldn't tell, good many is all I could tell you.
Q. Why did you hide in the (clift)? A. Scared.
Q. What of? A. Scared I might get killed.
Q. Who would kill you?
A. Fellows that done the shooting.
Q. In the camp or outside?
A. All shooting down there and I was scared a stray ball might hit me.
Q. Whose guns?
A. All I reckon, the guards as well as the rest of them.
Q. Anybody shooting at the guards? A. Yes, sir.
Q. From where was the shooting coming, from outside the camp? A. What they called No. 3.
Q. See any shooting outside from No. 3?
A. Some towards there.
Q. Saw the guns going off? A. Smoke from them.
Q. See many men?
A. Two guards and more after that.
2071 Q. How many after that?
A. Pretty good bunch, didn't stop to count them.
Q. You saw [a] smoke from their guns?
A. Yes, sir.
Q. See any smoke from any buildings?
A. After we come to [clift] saw smoke, didn't see buildings.
Q. What direction? A. No. 3.
Q. You know it was from No. 3 or some place around No. 3? A. Couldn't say.
Q. What is your best judgment?
A. Couldn't say without seeing it.

Q. Couldn't be sure? A. No, sir.

Q. When this smoke was coming from the general direction where No. 3 was, see any men between there and where you were?

A. The men was this side before we saw the smoke.

Q. What men? A. Those men after the guards".

Cross-Examination

By Mr. Webb Covington:

"Q. You say Mr. Hackett paid for your transportation when you went to Prairie Creek, Ark? A. Yes, sir.

Q. This man Hackett who is here today as a witness in the case?

A. Here, I don't know if he is a witness or not.

Q. Is that the Mr. Hackett paid your transportation from Briceville to Prairie Creek, Ark.? (pointing to a man).

A. Looks like the man.

Q. Is it the man?

2072 A. I would not swear positive when I am not certain.

Q. That the man you saw this morning?

A. Yes, sir.

Q. That the man you take to be the man that paid your fare? A. Yes, sir.

Q. Did he go back with you? A. Yes, sir.

Q. To Prairie Creek? A. Yes, sir.

Q. Saw him after you got back there?

A. Next morning.

Q. What did he tell you when he asked you to go to Prairie Creek, Ark.?

A. Didn't ask me to go, fellow by the name of Johnson asked me to go and said the country is all right.

Q. Who is Johnson?

A. J. J. Johnson the way he signs his name.

Q. Is he a preacher? A. Yes, sir.

Q. He live in this county now? A. No, sir.

Q. You know where he is? A. No, sir.

Q. You have any talk with this man Hackett you identify at all about the matter?

A. I believe he said everything was all right, I would not say for certain, he did I believe, I would not be positive.

Q. What did he tell you?

A. I think he told me it was all right.

Q. At least he didn't tell you they had trouble and

2073 wanted you to go and take the place of striking miners?

A. No, sir.

Q. And Johnson didn't. A. No, sir.

Q. And he is a preacher?
A. That's what they say he is.
Q. What corporation were you working for at Prairie Creek, Ark?
A. I don't know, the Bache and Denman Coal Co.
Q. Who paid you for your work?
A. Well we didn't have any pay day while I was there, when the fight come up I went to (headquarters) and they give me $10.00.
Q. What headquarters? A. Fort Smith.
Q. What did they owe you?
A. $9.00 and something, give me $10.00 to pay my expense while I was in there.
Q. Give you more money than they owed you?
A. Yes, sir.
Q. You come back to Tennessee? A. Yes, sir.
Q. How long before you returned to this place after you say you left Prairie Creek?
A. Nearly a month before I got back.
Q. Your wife come back with you? A. Yes, sir.
Q. How long have you lived in this section of the State of Tennessee? A. 27 years.
2074 Q. Born and reared here? A. Yes, sir.
Q. You stated in your examination in chief when you went back in the bluff you didn't see anything?
A. No, sir.
Q. Impossible to see anything about the [mones], wasn't it? A. Yes, where I hid I couldn't see.
Q. You see the guards begin to fire down there?
A. I wouldn't say which one fired first.
Q. Mr. Saunders, had a perfect arsenal about that mine, had an office filled with high power guns?
A. Had some there.
Q. Bache Denman as you call it? A. Guns in the camp.
Q. How many guards they have there?
A. I don't know that.
Q. Did you get acquainted with Jim Price a guard at the mines where you were working, who was sent to the penitentiary from Franklin County, Arkansas, for shooting a man in the back? A. No, sir.
Q. You get acquainted with another guard at the mines where you were working named Dan Desentis who was sent from Judge Ustus Court in Franklin County, Ark., to the penintentiary? A. No, sir, did not.
Q. How many days did you work?
A. Three shifts and a half.

Q. You stated a moment ago that when you left camp No. 3 on the morning of the 17th, you went to a bluffff and that afterwards you went down to a farm house?

A. I lived in [whast] was called No. 3.

2075 Q. And when you left the farm house you stated that two men were [sganding] in the road? A. Yes, sir.

Q. Did you know either one of them? A. No, sir.

Q. Were you acquainted with John Bumpus?

A. No, sir.

Q. Now what time was it in the morning that you went down to this farm house?

A. About nine or nine thirty when I went to the house.

Q. From that house could you see the tipple of the mine at which you had been working? A. No, sir.

Q. Couldn't see it? A. No, sir.

Q. Then after you left camp No. 3 that morning you didn't see anything or anybody in that valley where you had been working, in that particular mine? A. No, sir.

Q. Now tipple No. 3, referred to by you, how far did it stand from where you had been working at the time?

A. About 300 yards up on a hill from where I was, little raise.

Q. South?

A. I can't tell that, mines down here and camp up here.

Q. Didn't get acquainted with the directions?

A. No, sir.

Q. What time did you leave the farm house?

A. Didn't stay there but a few minutes.

Q. Went on to Mansfield? A. Yes, sir.

2076 Q. And took the train from there to Fort Smith?

A. No, sir, walked it.

Q. Walked into Fort Smith? A. Yes, sir.

Q. How many guards did you see when the shooting began? A. Two.

Q. Where were they?

A. Toward No. 3 tip, or what they called No. 3 tipple.

Q. Who were they?

A. Said one was a fellow by the name of Dunlap.

Q. Harry Dunlap? A. Yes, sir.

Q. Know him? A. When I seed him.

Q. Who was the other one? A. I don't know.

Q. Did you watch them while they were shooting?

A. No, sir, I broke to run.

Q. All you know, those guards were down there and they were shooting?

A. The fellows after them shooting at them and they were shooting back.

Q. How could [—] tell they were shooting back?
A. I could see the guns pointed this way and some back the other way.
Q. Why do you say, shooting at them and they were shooting back? A. Don't understand you.
Q. Don't you know they were shooting at the other fellows and the other fellows were shooting back?
2077 A. Guns were pointed toward each other.
Q. You see the guns of the other fellow pointed toward them? A. Yes, got close when I broke to run.
Q. Together? A. Close to me.
Q. How close?
A. One hundred to one hundred and fifty yards, something like that.
Q. How far is camp No. 3 from the mine you worked at?
A. About 300 yards.
Q. You didn't meet any one you know? A. No, sir.
Q. You met nobody on the road to Mansfield?
A. Yes, I met a whole lot of people, but I didn't know them?
Q. I thought you said you didn't meet anybody but Brown?
A. I over took Brown and we got together.
Q. Where did you get together?
A. Somewhere between that place and Mansfield.
Q. Brown go with you into Mansfield? A. Yes, sir.
Q. Was his wife with him? A. Yes, sir.
Q. Who else was with Brown?
A. Other man and his wife, or another man and a woman, I don't know whether it was his wife.
Q. You know the man's name? A. No, sir.
Q. When you reached Mansfield did they have any kind of gathering there that day?
A. Some kind of a picnic, I think, at the right of the
2078 depot as you come in.
Q. Didn't see anybody with guns that day except the parties you spoke of? A. No, sir.
Q. Did Brown go over in Fort Smith with you?
A. No, sir, his wife, or the woman with him, give out and he stopped over or something until next day. After we left Mansfield me and my wife went by ourselves.
Q. Did your wife go to Mansfield with you?
A. Yes, sir.
Q. Who was superintendent of the mines, you know?
A. Couldn't tell you that.
Q. Don't know? A. No, sir.

Q. Where do you live now? A. Briceville.
Q. How far is that from here? A. Four miles.
Q. Are you going back home from here? A. Yes, sir.
Q. What is the county seat of this county?
A. Anderson County.
Q. What town? A. Clinton.
Q. How far is it to Clinton?
A. Ten miles, I think, from Coal Creek here.
Q. Who is the prosecuting attorney for your district here?
A. I don't know, never in law in my life."

"Redirect Examination

2079 By Mr. Drinker:
Q. Did you ever hear Mr. Johnson preach?
A. Yes, sir.
Q. Where? A. At Briceville.
Q. How many guns were there at the house where you were? A. One.
Q. How many? A. Johnson had one there.
Q. You have a gun? A. No, sir.
Q. How many others were in the house with you?
A. Me and Johnson and his boy and Sam McKamey, English Dougherty and Andrew Dougherty.
Q. Did either of the Doughterty's have a gun?
A. Might have. Didn't have a gun—don't know anything about the time they were guards.
Q. Saw some people on the way to Mansfield, you recognize any of them? A. No, sir.
Q. Any of them have guns?
A. Met two fellows in a buggy that had one gun.
Q. What happened when you met them?
A. When I met them a fellow said, "hello old Brown."
Q. Then what happened?
A. Brown said, "howdy". Me and my wife walked on and Brown started and the fellow in the right hand side of the buggy pulled a gun out of a sack and shot back over the buggy.
Q. What direction? A. Toward us.
2080 Q. Where was Brown from you at that time?
A. In behind me when he fired.
Q. What did you do?
A. Broke and run and run about 25 to 30 steps.
Q. What did the fellows in the buggy do?
A. Nothing, went off.
Q. How many shots fired? A. Three.
Q. What did Brown do? A. Run.

Q. What wife do? A. Run, too.
Q. Which one stopped running first?
A. Can't tell, running when went in the barn."

"Recross Examination

By Mr. Covington:

Q. Were you subpoenaed to come here today to testify?
A. No, sir.
Q. Who instructed you to report here at this particular time? A. He just told me to come down.
Q. Who? A. Fellow by the name of Curtis.
Q. What is his given name? A. I don't know that.
Q. When did you first see him?
A. One day last week, I disremember what day it was.
Q. Ever see him before? A. No, sir.
Q. Is he the fellow around the hotel, that was in here?
A. Was in but don't know if he was when you came in or not.
2081 Q. What did he pay you to come here to testify?
A. An average day's work.
Q. Who are you working for?
A. Knoxville Iron Company. Cross Mountain Coal Company.
Q. They run open shop? A. Yes, sir.
Q. Who is the superintendent? A. P. F. Lynch.
Q. Was Lynch out at Prairie Creek with you?
A. No, sir.
Q. Is he here now as a witness in this case?
A. No, sir, not that I know of.
Q. You have to get permission from Mr. Lynch or any one in authority in your mine before you can get away for a day?
A. No, sir."

Mr. Drinker: I don't care about the rest of the redirect.

Mr. Neal: We waive the rest of the Recross.

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Mr. Lucas: We will offer in evidence, and consider as read, the deposition of CHARLES SUTTLES as it appears in the record of the former trial at pages 1463 to 1476, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of his testimony and extracts from the former record of the witness named for the reason

that under the ruling of the Supreme Court the evidence has no probative effect, as incompetent, and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

2082 The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination.

Q. Your full name is Charles Suttles? A. Yes, sir.
Q. Where do you live now?
A. Kentucky, Blue Diamond.
Q. On the L & N? A. Yes, sir.
Q. What company do you work for?
A. Blue Diamond Coal Company.
Q. Where did you live in June, 1914?
A. Briceville and here at Coal Creek.
Q. In June 1914, somebody come to see you to get you to go to work in Prairie Creek, Ark.? A. Yes, sir.
Q. Who was that?
A. Fellow by the name of Bud Eustice.
Q. Did he tell you the conditions in Prairie Creek?
A. No, sir, not at that time, I told him I couldn't go I was running a team here for Loyal Coal Company and sent a man to me, I don't know if he sent him and got me to go.
Q. Who? A. Huk Thomas.
Q. Tell you anything about the conditions at Prairie Creek?
A. Expecting a little trouble or, had been, but it was all settled.
Q. Strike on? A. Not until I got down there.
2083 Q. Know it until you got on the train?
A. No, sir, not until I got on the train and the bank boss at the Royal mine was on and told me was a strike.
Q. Where did you go? A. Knoxville.
Q. Who went with you?
A. Huk Thomas, Sam Thomas and Archy Bray.
Q. Know about the strike before you got to Knoxville?
A. Yes, sir.
Q. Where did you go from Knoxville?
A. Through up to there.
Q. To Prairie Creek? A. Yes, sir.
Q. Did Eustis go with you? A. Yes, to Fort Smith.

Q. When did you get to Prairie Creek?
A. What time?
Q. What date? A. 10th, day of the month.
Q. What month? A. June.
Q. What were you employed to do there?
A. I worked in the mines, cleaning up some.
Q. What else? A. In the kitchen some.
Q. What else? A. Guarded.
Q. What do you mean by guarded?
A. Shaft of No. 4.
Q. What against?
2084 A. Looking to be burned up, none of the company told me, United States Marshal told me.
Q. What did they tell you to guard against when they made you a guard? A. Union they said.
Q. Union men? A. Yes, sir.
Q. Have a gun? A. Yes, sir.
Q. What kind of a gun?
A. I believe it was a—I forget the name—30 Winchester I had.
Q. Where were you on the night of the 16th, of July, that was the day before the battle?
A. The battle was on the 16th, wasn't it?
Q. Battle was on the 17th? A. I was there.
Q. What were you doing the night before?
A. Guarding.
Q. Where?
A. Right in the gate where you went in at the mines.
Q. Next to the office? A. Yes, sir.
Q. Near the office? A. Yes, sir.
Q. How far away was that from where you slept?
A. I guess 100 yards
Q. Did you see any men going up and down the road that evening?
A. Yes, sir, passed up and down the road that evening.
Q. Have guns?
A. No, sir, didn't see any guns that evening.
2085 Q. More people on the road that usual?
A. Yes, few more than usual.
Q. What happened during the night?
A. Wire or something or other was cut, or something fell on it. I couldn't say it was cut.
Q. All the lights went out? A. Yes, sir.
Q. What time of night? A. Midnight.
Q. Before that, in the week before that, had you ever been over to Frogtown? A. Never was over there.

Q. Did any of the men that were in there with you working for the company go over there as far as you know?
A. Not as far as I know.
Q. What else happened during that night?
A. Weren't anything that night, that morning about 4:30 another man with me—
Q. Who was he? A. Didn't know the man, stranger.
Q. Working for the company? A. Yes, sir.
Q. What happened?
A. Dog there and it raised up and began growling and I looked up to see what it was growling at and saw some men down in the road, three bunches of them in the road, just a little ways from me in plain view, three bunches of them.
Q. How many in a bunch? A. Six or seven or eight.
Q. They have guns?
2086 A. Yes, sir.
Q. Did you hear any shooting at that time?
A. Not right at that time, on down a little [passed] me there was some shooting.
Q. From where?
A. From where these men went about the railroad, back of camps where had some tents.
Q. You see the flash of smoke? A. Seen the flash.
Q. Coming from where these men went? A. Yes, sir.
Q. See any bullets? A. Yes, sir.
Q. Where did they strike?
A. In the office, put the window right out.
Q. Then what did you do?
A. Went to wake up the marshals, they give me orders not to fire no guns nor raise no disturbance, I done that and I went to wake them up, as I went down about the time I got to the tents shooting in there and a bullet went through the bib of my overalls. I waked them up and they grabbed up their guns and lit out to where the shooting was, but didn't see anybody.
Q. Come back? A. Yes, sir.
Q. Then what happened?
A. I [seed] 25 or 50 men looked like.
Q. How many shots were fired?
A. I guess something near 100 shots or more.
Q. Then where did you go?
A. I stayed right there where I was at.
2087 Q. [(They)] you go to the gate? A. Yes sir.
Q. How long did you stay there?
A. Until they relieved me at breakfast.
Q. What time? A. About seven o'clock.

Q. Anything happen while you were at breakfast?
A. I couldn't say, I didn't hear anything.
Q. How soon after breakfast until it started up again?
A. About eight o'clock or sometime near.
Q. What was the first you heard?
A. Three shots back up towards No. 3, three or four shots fired and looked and seen No. 3 tipple afire.
Q. See any people over there? A. Yes, sir.
Q. Which way were they coming?
A. This way toward me, going from No. 3 toward No. 4 tipple like.
Q. Did you see whether they were armed or not?
A. Could not.
Q. Were they firing? A. No, sir, stopped like.
Q. Had you heard any shooting in that direction by that time? A. No, sir, only three about the time of the fire.
Q. Where were they coming from? A. About No. 3 tip.
Q. Three shots at No. 3 inside or outside by these people over toward No. 3? A. Couldn't say.
Q. Where were they fired from?
A. Couldn't say if inside, don't know if it was outside
2088 or not, good piece from me.
Q. Can't tell who fired the three shots?
A. No, sir, couldn't tell.
Q. What happened to the men that you saw between you and No. 3 tipple? A. Can't say.
Q. Where did they go?
A. No, sir, right there about that time a man named Culley and bank boss started around to see where the wire was cut and come running back in a buggy and [hollowed] to open the gate and I opened the gate and they come in and jumped out of the buggy and said, "going to give us hell today", and I said, "they are" and they commenced shooting in there.
Q. Who? A. I don't know.
Q. What direction? A. Out of the woods.
Q. What direction?
A. From No. 4 toward right of No. 4.
Q. The shooting in the camp or out from the camp?
A. Out of the camp.
Q. See any men out there?
A. No, sir, not at that time.
Q. Where did you go? A. Tipple.
Q. What did you come to the tipple for?
A. Take care of ourselves.
Q. Have your gun? A. Yes, sir.

Q. What you doing with it?
2089 A. Taking care of it.
Q. Shooting? A. We shot—I shot one shot.
Q. What at?
A. Fellow firing a house on the hill me and a United States Marshal.
Q. What do you mean by firing a house?
A. Setting it on fire.
Q. How far away? A. 2 or 300 yards.
Q. What house was it?
A. House on the hill toward No. 4. Sorter back of No. 4.
Q. Between No. 4 and what?
A. House between No. 4 and No. 3.
Q. Could you see who the men were? A. No, sir.
Q. Fire toward you? A. Yes, sir.
Q. How many were they?
A. Couldn't say, a pretty good bunch.
Q. How many men you say you saw on the outside that morning? A. Couldn't say how many.
Q. About?
A. Between 25 and 30 men I seen in the bunch.
Q. Around the house?
A. 20 to 25 around that house.
Q. How many men you see all around the place at that time? A. That day?
Q. Yes. A. Several of them.
2090 Q. How many?
A. Two hundred or three hundred or more.
Q. Where did you go after that?
A. Left there, got out and come to Fort Smith.
Q. Meet anybody on the way?
A. No, sir.
Q. Which way did you go?
A. Right down the creek.
Q. Down the creek bed?
A. No, sir, wagon road to a spring and crossed the creek and went down the fields, and come across, I forget the name of the station, to the railroad.
Q. Who was with you?
A. Fellow named Sam Brown, I don't know who all, forty or fifty in the gang.
Q. Have a gun with you?
A. Yes, sir.
Q. Fire it as you were going?
A. No, sir.
Q. Did you all go into Fort Smith together?

A. Eight of us went together.
Q. You remember who they were?
A. Some of them.
Q. Who?
A. Sam Brown, fellow named Sam Brown and Tom Perry. Let's see, I don't recollect the others, I know their faces if I could see them.
Q. Where did you go then?
A. Fort Smith.
Q. And from there where did you go?
2091 A. Come home.
Q. Why did you leave Prairie Creek, the tipple where you were? A. When did I?
Q. Why didn't you stay there?
A. Had to go away.
Q. Why? A. Shooting in there.
Q. What made you go away.
A. Had to go or be killed, they had come in there shooting and burning up everything that way."

Mr. Warrum: (reading).

"Cross-Examination

By Mr. Covington:
Q. What time did you leave there?
A. About twelve o'clock in the day.
Q. Remember if it was after twelve or little before?
A. Could have been a little after twelve
Q. You leave any one there when you went away?
A. No, sir, not that I know of.
Q. Anybody shooting when you left inside of the stockade?
A. No, sir, not that I know of.
Q. No shots fired except on your side?
A. Yes, several of them fired.
Q. You recall now who did the shooting from the inside?
A. Sir?
Q. You recall who shot on your side?
A. Them (Marshal's), done most of it.
Q. The United States (Marshal's)?
A. Yes, sir.
2092 Q. They the ones that first show up by No. 3?
A. I don't know, couldn't say if there was any up there or not.
Q. You don't know who fired those shots at No. 3?
A. No, sir.
Q. You know the guards, most of the other guards at that mine? A. No, sir.

Q. They had a custom of stationing guards at No. 3 and between 3 and 4 at the pump house?

A. I suppose so.

Q. Who did this guarding at No. 4?

A. I never was there, never saw none of those places.

Q. You left there with 35 or 40 others about twelve o'clock?

A. Yes, about twelve.

Q. Any shooting going on at that time?

A. Yes, sir.

Q. Was there a good deal of shooting?

A. Yes, [shore] was.

Q. Where was you when somebody shot a hole in the bib of your overalls?

A. Starting to wake up them United States (Marshalls),

Q. How many were there at that time?

A. I don't know, I don't know. I didn't know anybody, all strangers to me, I got acquainted with one of the (marshalls).

Q. Who was that? A. Cleo Shell.

Q. Cleo Shell there the morning of the shooting?

A. Yes, sir, the man I waked up, the man that gives me orders what to do.

Q. Who was the other (Marshall) that was there?

A. I can't say. I got acquainted with two (mar-
2093 shalls).

Q. What was the name of the other one?

A. Holt.

Q. Holt there the morning of the shooting?

A. No, sir.

Q. Nobody but Shell?

A. I was there.

Q. And the other man?

A. Couldn't say how many (marshalls) was there.

Q. Shell and the other (Marshalls) with him did the greater part of the shooting from the stockade?

A. Yes, if any done much they done it. I don't know (—) done that shooting at No. 3.

Q. You don't know who did that shooting?

A. No, sir, could not say.

Q. You don't know who did any of the shooting that was not done from the inside of the mine, do you?

A. No, sir, couldn't say.

Q. You didn't see any men around that you recognized except the crowd you were in?

A. No, sir, but one man, a young man that come and worked stayed two or three weeks there maybe, didn't do

nothing much. I think they fired him out from there and it made him mad and he said he was going to have the God Damned thing tore up and went with the Union, and he come back by where I was at and said the God Damned thing be tore up in less than a week. I don't know his name, I know they called him Rusty.

Q. Describe that man, I want to locate him.

A. Low heavy set man, square built, freckled face.

Q. What age?

A. Looked like he was about 20 or 21, somewhere
2094 along there.

Q. Didn't call him Sullers, did they?

7 A. Called him Rusty, all the name I ever heard him go by.

Q. How long before this occurred on the 17th, was he discharged by the company?

A. One week or two weeks, didn't pay any attention.

Q. Now you said he went with the Union?

A. Said he was going to the Union.

Q. You don't know anything about it?

A. No, sir.

Q. After that he come back?

A. Yes, sir.

Q. And said the God damned thing be blowed up in less than one week?

A. Yes, that's what he told.

Q. Mr. Suttles, don't you know that four days before that riot at Prairie Creek that Frank Mays, United States (Marshall) at Prairie Creek and took away the (Marshalls) and was not there at that time?

A. I don't know that, they claimed they was (marshalls), I don't know, they said they was.

Q. That fellow Shell, he said he was a (Marshall)?

A. Yes.

Q. And the other fellows that were (that) at that time on the morning of this trouble told you they were United Staes (marshalls)?

A. Yes, I understood then they was (Marshalls).

Q. Then you didn't know at that time that all the real United States (Marshall's) had been taken away from there?

A. No, sir, didn't know it at all.

Q. Those fellows represented themselves to be
2095 United States (Marshall's) and you took them at their words?

A. Yes, that's all I had to go by, was their word.

Q. You see this fellow that said he was going to tear this mine up, see him any more, you saw him the morning of the trouble? A. Yes, sir.

Q. In the crowd? A. Yes, sir.

Q. With his gun?

A. I never seen him any more.

Q. How far away were those fellows in the road?

A. I guess as far as that house. About 100 yards.

Q. 4:30 in the morning?

A. Somewhere along about that time.

Q. Daylight?

A. Getting Daylight, getting pretty light.

Q. Did he say anything to you?

A. Never spoke, nobody spoke.

Q. You speak to him?

A. No, sir, did not speak to him.

Q. You recognize him at 4:30 in the morning 100 yards away and it was not then daylight?

A. Hardly good daylight, getting pretty good light.

Q. You could distinguish a white man from a negro that far? A. Yes, sir.

Q. You say there was 20 to 25 in that crowd?

A. Yes, may be more, I couldn't say, I didn't count them.

Q. How far from the point where you first discovered them did they go before this shooting began?

A. They went I guess two or three hundred yards from there to the railroad and back into the camps.

2096 Q. What camps?

A. At the office where they had tents, them (Marshalls) there in them.

Q. Went where the (Marshalls) and other people were?

Q. Yes, know where the office sits there? They went down that way to the tipple and went that way to the camp.

Q. Went in the camps?

A. No, sir, stayed in the road, outside in the road.

Q. How close to tents of these (Marshalls)?

A. Shooting all around them.

Q. How close were they before they begun to shoot?

A. Didn't come in on [the,] they was down here and the (Marshalls) down there, and that bunch didn't come back around, never seen that bunch any more.

Q. You would have had to know that this man, this particular man was there to know if you saw them, would you not?

A. I know he was with them that morning.

Q. He was the man that had been working where you had been working? A. Yes, sir.
Q. No. 4? A. Yes, sir.
Q. He had been discharged about one week before that?
A. I couldn't say if he was discharged or just quit.
Q. You said he was discharged and awfully mad?
A. He said he was discharged.
Q. That was about one week before this occurred?
A. Somewhere about that, maybe longer or not that long.
Q. How many men were working that at the time of this difficulty?
2097 A. I couldn't say, I guess 50 or 75 men there just making a guess at it, a man might be fooled in a bunch of men.
Q. What did you do from the time they shot that hole through the bib of your overalls up to the time you left there?
A. I stayed right there, them United States (Marshalls) that Cleo Shell we all stayed around, we got to the tipple where we could take care of ourselves, watch for ourselves to keep from being killed, stayed there all around the tipple.
Q. Where was this fellow Eustis?
A. There.
Q. You left with him?
A. He come part of the way with me.
Q. He was in the crowd that left about twelve o'clock on the day of this trouble?
A. Yes, in the crowd.
Q. You know Buster Moore?
A. Yes, I know him.
Q. He come out with you?
A. Yes, sir.
Q. Went to Fort Smith?
A. I guess he took the train and went to Fort Smith he left us.
A. About the station, I forget the name of the place.
Q. Went out of the mine with you?
A. Yes, sir.
Q. Know Torrance McLoy a young fellow that worked there? A. Yes, sir.
Q. Went out with you too along with Mr. Moore?
A. I would not say there was two or three of those boys.
Q. Torrance was the larger one and Tommy the
2098 smaller?
A. I don't remember, one of them did go the best of my recollection, didn't pay much attention.
Q. Sam Thomas there? A. Yes, sir.

Q. Go out with you? A. No, sir.
Q. When did he leave?
A. About nine, nine or ten o'clock in the day.
Q. Can you name some of those who left with you?
A. Don't know whether I can or not, whether I can think of the names or not.
Q. You would know this man Rusty?
A. Yes, was to see him I would know him.
Q. Never seen him since that day? A. No, sir.
Q. Have you seen Sam Thomas? A. No, sir.
Q. Sam Thomas go from this place? A. Yes, sir.
Q. But he never returned?
A. No, not that I know of, never have seen him.
Q. While you were guarding there, how many days or nights did you guard?
A. I don't remember, didn't guard very many, few days.
Q. What is your trade or profession?
A. Driving a team and working with stock.
Q. You work in the mines any while you were out there?
A. Yes, sir.
Q. What did you do in the mines?
A. Cleaned up and laid pipe line.
2099 Q. Now who were the three men you say rushed in to the mine that morning of the 17th in a buggy?
A. Two men.
Q. Who were they? A. Eustis.
Q. Bud Eustis?
A. Yes, I believe the other was Culley.
Q. Ransom Gulley? A. I didn't know them apart.
Q. Tall fellow? A. Yes, sir.
Q. Nearly as large as Mr. Bache there?
A. Yes, near it.
Q. He remain in the mines there until you left?
A. Yes, came out as we did, left his horse and buggy up there.
Q. Now, Mr. Suttles, this one man that you have described, who was commonly known as Rusty is the only man that you can identify? A. Yes, sir.
Q. Who else was with him you [kon't] know?
A. No, sir.
Q. And he worked there until one week of that time?
A. Yes, been there sometime I had never worked any with him.
Q. The last talk was within less than one week of the trouble on the 17th? A. Yes, along about one week.

Q. Mr. Drinker asked you if you did not ascertain on road, while on the road to Prairie Creek, between Coal Creek and Knoxville, that there was a strike on at Prairie Creek, Ark.?

2100 A. Yes, sir.

Q. Did not ascertain that from the men here but from another man? A. No, sir.

Q. They didn't tell you anything about the trouble over there?

A. No, sir, not then, they was out getting up men, didn't tell me anything about it.

Q. Paid your transportation over there? A. Yes, sir.

Q. Single man?

A. I have been married, my wife is dead.

Q. You were over there, didn't have any family with you?

A. No, sir.

Q. When did you really learn that they anticipated some trouble at Prairie Creek?

A. The morning that we started from here a lot of boys got to talking and telling me there was a lot of trouble, and old man Thomas was there then and said there had been trouble but were not any now.

Q. He was the one that come to you soliciting you to go?

A. Yes, sir.

Q. Where is he?

A. I couldn't say not saw the old man, but he is here in the State somewhere I think.

Q. You related to Sam Thomas?

A. No, sir, no relation.

Q. Who is J. J. Johnson?

A. Man that used to be in Briceville, an old like man.

A. preacher?

2101 A. Yes, claims to be, I am not personally acquainted with him, barely know him when I see him.

Q. What company did you work for at Prairie Creek, Ark?

A. Bache & Denman, Prairie Creek Coal Company.

Q. Don't know who you worked for? A. No, sir.

Q. They didn't take the trouble to tell you?

A. No, sir, didn't take the trouble to ask them.

Q. You say you worked from the 10th, to the 17th, of July?

A. Yes, sir.

Q. How long did you remain at Fort Smith when you reached there? Come back home?

A. Yes. Stayed there four or five days, maybe a week, no, didn't stay over four or five days.

Q. You say you helped to clean up the mine?

A. Yes, from the air way.
Q. What were you being paid?
A. Paid me $2.80 a day, per day. I think that was it, wouldn't be positive.
Q. You get your money?
A. I did have a statement, but I have not got it now, could state to a cent what it was paying me.
Q. Now in answer to Mr. Drinker's question a moment ago you say you saw some man early in the morning burning a house toward No. 3? A. Yes, sir.
Q. That before or after the three shots, you don't know who fired the shots? A. Afterward.
2102 Q. Who was guarding the No. 3 that morning and night before?
A. One fellow named Tom Perry, didn't know the other man.
Q. You know where Tom Perry was from?
A. Yes, Tenn.
Q. Where does he live?
A. Knoxville, last I knowed of him.
Q. What was his occupation?
A. Worked around the mines, one thing and another.
Q. Know what he did before he went to Arkansas?
A. Coal tipper at Royal mines.
Q. Before he went to Arkansas?
A. Yes, tipping coal.
Q. Did you ever learn from Rusty or anyone else just where he came from?
A. No, sir, I never did, never asked the boy where he come from.
Q. Was that the name by which he was commonly known around the mines?
A. Yes, the name he was commonly known by around the mines, so far as I know.
Q. That all you ever heard him called? A. Yes, sir.
Q. And he answered to that name?
A. Yes he answered to it.
Q. And you are certain you never met him after he had the conversation with you in which he threatened to burn the mines? A. No, sir, never have.
A. No, sir, never have.
Q. How many [shote] you fire that morning?
A. One shot.
Q. You shot the fellow that shot your overalls off of you?
2102a A. No, sir, if I had seed him I would.
Q. Have you those overalls?

A. I did have but got my house burned up, I fetched them home to save them, but got them burned up.

Q. You live in Coal Creek? A. No, sir, Kentucky now.

Q. What do you do in Kentucky

A. Get timber for the mines.

Q. What mines? A. Blue Diamond Coal Company.

Q. If called upon in the County seat of this county to make the same statement about the man soliciting you to go to Prairie Creek, Ark. that you made here, would you do it?

A. Yes, sir."

"Redirect Examination

By Mr. Drinker:

Q. You know Sandy Robinson when you see him?

A. Yes, sir.

Q. You see him on July 17th?

A. Yes, evening before.

Q. Where? A. Went up the road.

Q. Know Clint Burris when you see him? A. No, sir.

Q. Had the company shipped any coal before the 17th, of July? A. No, sir, done had it loaded.

Q. When did they load it?

A. From the 10th, of June until that time.

Q. Had they shipped any coal out before the battle?

A. I don't know.

2103 Q. Couldn't say? A. No, sir.

Q. You were cleaning up in the mines?

A. Yes, worked in the mines, loaded some coal.

Q. How long before the battle?

A. Day or two before, maybe the day before.

Q. Load any before that? A. Yes, sir.

Q. How long before that?

A. Not very long before that, had not got it cleaned up and the water cut very long before that.

Q. You say there was a man named Gulley, you know if it was Gulley or Gullett? A. I couldn't say.

Q. You know Gullett?

A. Jim Gullett or Gulley, don't know which.

Q. You know two men one named Gulley and the other Gullett? A. Yes, one fellow back in there that day.

Q. Both go to Fort Smith with you?

A. Couldn't say.

Q. Which one did?

A. That big man that come to the train.

Q. That was the big man? A. Yes, sir.

Q. That you thought was a [Marshall]?

A. No, sir, didn't think he was a [marshall], man that run the store there, I think."

"Recross Examination

By Mr. Covington:

Q. Mr. Suttles, on the 17th day of July when this
2104 trouble occurred about which you testified, was John Gulley and John Gullett both at the mines that day?

A. Yes, two of them I never knowed none of them but Jim, knowed his name but didn't know the other boy's name.

Q. The boy whose name you don't know was a little larger than the one you did know?

A. Yes, the dark skinned fellow.

Q. Both there that day? A. Yes, sir.

Q. John and Jim? A. Yes, both there.

Q. Did they leave with you?

A. Yes, come out when we did."

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Mr. Lucas: We will offer in evidence, and consider as read the deposition of JOSEPH A. PARRISH as it appears in the record of the former trial at pages 1562 to 1571, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

2105 Direct Examination

By Mr. Hull:

Q. What is your full name?

A. Joseph Anderson Parrish.

Q. Where do you live?

A. My home is in Mena, Arkansas.

Q. What is your present occupation?

A. My present occupation is, I am connected as aviator with the Aviation Section of the Signal Corps, United States Army.

Q. You are at present at a Concentration Camp at Fort Wood, where you are now awaiting orders to sail for France?

A. Yes, waiting to sail for some place in France, we do not know where.

Q. Will you state where you were along in the spring of 1914?

A. In the spring of 1914 I was around Mena, Ark.

Q. Would you state whether or not you went from Mena to Fort Smith, Arkansas? A. I did.

Q. State what you did after arriving in Fort Smith?

A. I made two trips to Fort Smith.

Q. State when the first trip was?

A. I don't remember the exact date of the first trip, but it seems to me it was some time in the latter part of April.

Q. 1914? A. 1914.

Q. Did you on that first trip go from Fort Smith to the vicinity of Hartford, Ark?

A. I did; I went to Mine No. 4.

Q. Was that Prairie Creek, Arkansas? A. Yes.

2106 Q. That was a mine belonging to the Bache, Denman Co.? A. It was.

Q. What did you do there, at Prairie Creek, Mine No. 4, when you went there, on your first trip?

A. Well, there, on my first trip, I performed, or I was supposed to perform, the duties of a Special United States Deputy Marshal.

Q. Under whom were you serving?

A. I was serving under Deputy United States Marshal Holt.

Q. Was that James Holt?

A. I don't remember his initials.

Q. Where does Mr. Holt come from?

A. He lived in Mena, Arkansas at that time.

Q. With whom did you go to Prairie Creek on this first trip?

A. I went to Prairie Creek, in person, with Mr. Holt, and with others, of whom I remember Leo Schell and Lee Harmon.

Q. Were they also from Mena? A. They were.

Q. Were they also serving as Special Deputy United States Marshals? A. They were.

Q. Were there any others that went from Mena at this same time? A. Yes, sir.

Q. How many?

A. I don't remember, about fifteen others as I remember.

Q. And they all went to Prairie Creek, Mine No. 4?

A. Yes, sir.

Q. And served there also as Special Deputies?

A. Yes, sir.

Q. Do you know what the occasion of your company
2107 being sent there was, why the Deputies were sent to Mine No. 4?

A. The Deputies were sent to Mine No. 4, as was stated to us, because a few days previous to that there had been a riot at Mine No. 4 and that the Local Union had refused to operate the mine and had refused to let the mine be operated, and were raising considerable trouble in the vicinity, and were making it dangerous for the inhabitants of the immediate vicinity.

Q. From whom did you receive your instructions?

A. I received my instructions from United States Marshal Holt.

Q. Did this information which you have just stated come to you in those instructions to you? A. They did.

Q. Will you state what your instructions were, what instructions you got as a Special Deputy?

A. The instructions that I got as a Special Deputy, as I remember, were that I was being sent to Mine No. 4 to preserve order; that there was a state of disorder around Mine No. 4 and damage was being done to public property and that we were to be sent there to preserve order.

Q. How long did you stay at Mine No. 4 as a Special Deputy?

A. As I remember, I stayed at Mine No. 4 about two weeks as a Special Deputy.

Q. At the expiration of those two weeks did you return to Mena? A. I did.

Q. After that time did you return to Fort Smith again?

A. Yes, sir.

Q. And to Prairie Creek, Mine No. 4? A. Yes.

Q. In what capacity did you return?

2108 A. I returned, and I became an employe of the Coal Company.

Q. Of the Bache, Denman Coal Company? A. Yes.

Q. When did you go to Prairie Creek on this second trip?

A. If I remember correctly, the date was June 15, 1914.

Q. Did you go by way of Fort Smith? A. I did.

Q. Will you state what, if anything, occurred between Fort Smith and Prairie Creek, Mine No. 4, on that date, June 15th?

A. A number of men including Mr. Harmon and myself, took a train from Fort Smith to Mine No. 4. We experienced no trouble as far as Midland, Arkansas. At Midland, Arkansas, a number of men got on the train, and immediately be-

gan to make remarks that indicated that their attitude toward us was rather a hostile one.

Q. What do you remember being said?

A. We were referred to as scabs.

Q. Who were those men, if you knew who any of them were?

A. I remember one of these men as being Clint Burris, and another one of these men was Sandy Robinson.

Q. Do you remember any others?

A. I don't remember any others, just now.

Q. By way of refreshing your recollection, I will ask you if you remember John Manick on that train?

A. I did see John Manick on that train.

Q. Now, you said you were referred to as scabs; who referred to you as scabs?

A. These three men, particularly, I noticed.

Q. State what, if anything, occurred as you were getting off the train at Prairie Creek?

2109 A. When the train stopped at Prairie Creek I met two or three other passengers demanding to get off the train, and the three men I have named seemed to be the leaders of a mob who interfered with out getting off the train. Nearly all of the men had managed to get off before I undertook to get off myself. When I arose to get off and started toward the door, I met, just in the door, or inside of the door, Sandy Robinson, whom I passed, not paying any attention to him; I had gotten in the doorway, when something struck me in the back of the head and knocked me clear out into the brake chains. When I recovered from the blow I got, I looked around and I saw Sandy Robinson going through the car, looking back over his shoulder at me.

Q. Was there any one between you and Sandy Robinson at that time?

A. There was no one between me and Sandy Robinson at that time.

Q. You say something struck you; was it a missile thrown at you or did somebody push you? A. I couldn't say.

Q. But, whatever it was, it was of sufficient force to throw you out on the brake chains? A. I was.

Q. State whether or not Leo Schell, Deputy United States Marshal, was there at the time of the train?

A. He was near the train when the train stopped, and he was soon on the scene of action, trying to stop the trouble and seeing that the passengers got off the train with safety.

Q. Were any threats made by any of these three men that you have named about your getting off, or anything of that kind? A. There were threats made.

2110 Q. Coming now to the 17th, of July,—that was the day of the trouble at Mine No. 4, when some buildings were burned; do you remember that time?

A. If I remember correctly, it was the 17th, of July.

Q. Do you remember what day of the week it was?

A. I do not.

Q. What were you doing on the morning of the battle, if it occurred on that day?

A. On the morning of the battle I was acting as a watchman on guard at the tipple of Mine No. 3.

Q. What had been your duties from the 15th, of June up to this time?

A. My duties had been attending to an electrical traffic pump at the base of the shaft, in Mine No. 4.

Q. Pumping operations were going on all that time?

A. Yes.

Q. Do you know what the situation of the mine was at the bottom of the shaft? A. It was full of water.

Q. How long had you been guarding as you say, at the time of the battle?

A. If I remember correctly, I had been guarding three or four days.

Q. Had you, during those three or four days, gone over into the territory called Frogtown at any time?

A. I had not.

Q. Had you known of any guards going over there?

A. No.

Q. Did you discharge your gun at all while you were there at Mine No. 4?

2111 A. If I remember correctly, I did not discharge my gun while I was at Frogtown.

Q. Where were you on the morning of the battle?

A. On the morning of the battle I was on the tipple of Mine No. 3 when the battle started.

Q. With whom were you at that time?

A. I was with my brother, Ed. Parrish.

Q. Where is Ed. Parrish now?

A. He is in San Francisco.

Q. What is he doing there?

A. He is in the Naval Training School.

Q. Who else was you with there?

A. I don't remember the man's name who was with us at the tipple.

Q. What did you first see or hear of any trouble?

A. The first thing that suggested trouble to us was operations over in what was known as Frogtown, by hand cars going in and out on the railroad track, and boxes and other things which we did not recognize, being unloaded and being put into houses and storerooms and so forth.

Q. What time was that, about?

A. That was about 7 o'clock in the morning.

Q. When did you go out on duty?

A. We went on duty about 7 o'clock in the morning.

Q. State what occurred next?

A. From that our attention was called to a number of men crossing the woods from what was known as the Frogtown, towards the tipple of Mine No. 3; and they had guns and they seemed to be trying to conceal themselves by going from one tree to another.

2112 Q. How many men did you see with guns at that time?

A. I didn't count the men, but I should say that there were around a dozen or fifteen men.

Q. Had you, previously to that time, heard a volley of shots or firing early in the morning?

A. I had sometime before daylight; there were a number of shots fired into camp of Mine No. 4.

Q. You were sleeping at Mine No. 4, were you not?

A. I was.

Q. After you saw these men with guns going from tree to tree, what did you do?

A. I remained on the tipple of the mine and they began to shoot through their place of concealment at us, in the tipple; and at that point I climbed down out of the tipple and started to camp No. 4, to tell the men that we were having trouble at No. 3.

Q. Did you brother go with you?

A. He did not, at that time.

Q. Did he come into No. 4 later?

A. The men came in, and my brother—

Q. (interrupting)—You don't know that of your own knowledge, do you? A. No.

Q. State only what you know?

A. I know that my brother came in shortly after me.

Q. What did you do at No. 4?

A. At No. 4 I reported to the men that we had sent a number of men and that we had been fired on.

Q. Who was in charge of the Mine at that time?

A. I don't remember.

2113 Q. Was it Buster Moore?

A. If I remember correctly, Mr. Moore was in charge of the Mines at that time.

Q. State what you did, without further questioning, what you did and what you saw and what you heard, up to the time you left the mine?

A. From that time, shots were continually fired from the woods surrounding Mine No. 4, in at the shaft and at the men around the shaft.

Q. From what direction?

A. Seemingly from every direction.

Q. How many shots were fired?

A. There were too many shots fired for me to count them —quite a number of shots.

Q. Go ahead.

A. The firing continued from the outside, and some little firing from the inside out on throughout the day up until after 12 o'clock. Shortly after 12 o'clock Harmon, my brother and myself and Pat Molly, concealed ourselves in a part of the railroad track construction near the shaft of No. 4 and remained there until the firing discontinued from the shaft.

Q. Were you shooting all that time?

A. Some of the boys were shooting; I personally did not shoot.

Q. Did you have a gun?

A. I did. We remained there until about 2 o'clock, and the shooting had ceased, perhaps, an hour before at the shaft, although the shots were continually coming in from the surrounding timber. About 2 o'clock we came up from our place of concealment—

2114 Q. (interrupting). Just a minute had you seen any firing or had you seen the effect of any explosion during that time?

A. I had; I had seen the effect of an explosion at the entrance to Mine No. 3.

Q. What time was that?

A. That was sometime before noon.

Q. Did that explosion have some effect also at No. 4?

A. It did; it shook the shaft at No. 4 considerably.

Q. Where were you in relation to the shaft when it took place?

A. We were, it seems to me, close around the shaft at that time.

Q. Do you know whether No. 3 slope, as it was called, the No. 3 shaft under ground?

A. If I remember correctly, it was.
Q. Did you see any fire before 2 o'clock, any smoke?
A. I don't remember.
Q. State what you did about 2 o'clock?
A. About 2 o'clock my brother and Harmon, myself and Pat Molloy came out from our place of concealment to see what the men were going to do, and we found that there was no one there.
Q. Where?
A. At the shaft, no one at the shaft. We found there that we were alone, and we immediately started toward a thicket, just east of the shaft, and there we concealed ourselves in the brush for perhaps 30 minutes. During that time men passed on the road which ran very close to the one we were going going towards the shaft, and at about the end of that 30 minutes we heard shouting and whooping and shooting right where we knew the shaft to be located; and we got up at that time and started in an easterly direction towards Mansfield, Arkansas.
Q. Did you at that time see any flames or smoke?
A. Immediately after we left our place of concealment, we saw very large flames and smoke, about where we knew the shaft to be located.
2115
Q. At No. 4 shaft? A. Yes, at No. 4 shaft.
Q. Where did you go then, to Mansfield?
A. We went from there to Mansfield.
Q. Did you have any trouble in Mansfield?
A. At Mansfield we expressed the rifles which we had expected to take by train.
Q. What did you do in regard to expressing those rifles?
A. We expressed them in the usual way, and had a receipt from them, which my brother had in his pocket.
Q. What became of the receipt?
A. The receipt was taken from him by the mob which surrounded up later.
Q. Did you see that done? A. I did.
Q. What was done with the receipt after that, if you know?
A. The men who took the receipt started toward the express office and said they intended to get the rifles.
Q. What happened then?
A. Immediately after that the mob closed in on us with threats and blows, and we experienced a very difficult time for the next few minutes.
Q. Were any remarks made to you?
A. There were very violent threats made.

Q. What was said by either you or by the people around you?

A. The people around us asked us where we had been and what we had been doing.

2116 What did you tell them?

A. We told them we had been with Mine No. 4 as employes of the Bache, Denman Coal Company.

Q. What did they say to you then?

A. I don't know what they did say to us then.

Q. Well, not telling the words, but what effect did your announcement that you had been working in Mine No. 4 have on them?

A. Well, when they learned where we had been and what we had been doing, we seemed to make them still more antagonistic toward us and it produced violent effects.

Q. What did they do then?

A. They proceeded to beat us up.

Q. State in deail how you were beaten up?

A. Well, we were simply carrying on a conversation when men immediately in front of us began to strike us on the head and in the face and on the body.

Q. Did you or your brother or both of you, did you go down? A. We did; we both went down.

Q. Were you knocked down or did you go down voluntarily? A. We were knocked down.

Q. Did any one come to your rescue, so to speak?

A. Some one finally interfered with the mob after we had been knocked down on the pavement.

Q. Do you remember whether that was Express Agent?

A. I don't remember who it was.

Q. State what you did then?

A. We were told by the Express Agent that it would be un-safe to attempt to stay there until the train came, and we had best to walk out of town and go to Fort Smith the

2117 best way we could.

Q. Did you do that?

A. We walked from Mansfield to Fort Smith.

Q. How far is that, do you know?

A. I do not know how far it is.

Q. What time did you get to Fort Smith?

A. We got to Fort Smith the following day about 2 o'clock.

Q. What time did you leave Mansfield?

A. We left Mansfield about 6 o'clock in the evening.

Q. I neglected to ask you in connection with the trouble of June 15th, on the train, whether any of those men you named, meaning Manick, Robinson or Burris, had any sticks or clubs in their hands?

A. Burns had a baseball bat, and other men in the crowd there had bats and clubs.

Q. Did you see Clint Burris hold that bat over anybody's head or do anything with it?

A. Burris waved his bat in a threatening manner rather freely throughout the car.

Q. I went to also ask you in school just previous to going to Fort Smith in the spring of 1914?

A. I was.

Q. Where were you?

A. In the spring previous to that I had been in the High School at Mena, Ark. Previous to that I had been in Transylvania College, at Lexington, Kentucky.

Q. How long were you at Transylvania?

(No answer)."

Mr. Covington: I will read one question on the bottom of page 22 (reading):

"Q. How old are you?

2118 A. At present I am 22 years old."

Mr. Covington: We will omit from there to the bottom of page 25.

"Q. You say on the 17th, of July you left Mine No. 4, about 2:30 or 3 o'clock in the afternoon?

A. I did.

Q. And you saw no fire before leaving there any time during the day?

A. I saw the effect of an explosion at Mine No. 3 but I don't remember seeing any fire before I left the mine.

Mr. Covington: We will omit the remainder of the cross-examination.

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Mr. Lucas: We will offer in evidence, and consider as read, the deposition of N. G. TAYLOR as it appears in the record of the former trial at pages 1578 to 1584, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the

introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

2119 Q. Where do you now live?
A. Mammoth Springs, Arkansas.
Q. In what business are you engaged?
A. In the drug and jewelry business.
Q. How long have you lived at Mammoth Springs, Ark?
A. Since the 16th, of March 1916.
Q. State as near as you can recollect the distance from Fort Smith, Arkansas, to Mammoth Springs, Arkansas?
A. It is about three hundred miles by rail.
Q. Did you ever live in Sebastian County, Arkansas?
A. Yes, sir.
Q. At what town did you live?
A. Hartford.
Q. How long did you live at Hartford?
A. I think it was August 1911 that I went to Hartford.
Q. You went there in August 1911?
A. I believe that was the date, yes, sir.
Q. What business were you engaged in at Hartford?
A. In the jewelry business.
Q. How many years did you remain at Hartford?
A. About five years.
Q. Were you engaged all of that time in the jewelry business?
A. No, about four years at Hartford I was.
Q. You were in the jewlery business four years?
A. Yes, sir, I was in the jewelry business all that time.
Q. You were in Hartford then, in the year 1914 were you?
A. Yes, sir.
Q. State whether or not there was at that time a good deal of coal mining carried on in and about Hartford?
2120 A. Yes, sir.
Q. State whether or not the labor in the mines was done by union men?

A. I understood that it was union men.

Q. You were not a member of the miners' union yourself?

A. No, sir.

Q. Did you have a trade with the— or from the miners? Did you have a business from the miners, in other words were the coal miners customers,—a good many of them of your store? A. Yes, sir.

Q. Were you acquainted with a good many of them?

A. Yes, sir; quite a good many of them.

Q. Going back to April 1914, I will ask you if you remember about the occasion of a meeting of people over at the school house near Prairie Creek mine, the mine that was owned by the Companies known as Bache-Denman Companies?

A. Yes, sir; I know of the meeting over there.

Q. Now on the date before this meeting at the school house over near Prairie Creek, were you in Hartford?

A. Yes, sir.

Q. State whether or not there was a meeting in Hartford on that day?

A. Yes, sir, I believe there was.

Q. Do you remember whether that day was Sunday or not, or whether the meeting over at the school house was on a Monday?

A. Why, the meeting was Sunday at Hartford.

Q. That was the day before the meeting at the school house, was it? A. Yes, sir.

2121 Q. State, Mr. Tyler, whether or not on the Sunday there was any discussion of the controversy between the miners union and the Bache-Denman Companies with reference to he operation of the Bache-Denman plants on the open shop plan?

A. Well, I wasn't close enough to hear the discussion, although I understood it was being discussed.

Q. State whether or not at that meeting you recall whether or not there was a telegram read to the meeting?

A. Well, it is my impression that there was, but I couldn't be positive.

Q. Were you near enough to hear the contents of the telegram, or the substance of it? A. No, sir.

Q. Do you know who read the telegram?

A. No, sir I do not.

Q. Do you know Mr. Slankard?

A. Yes, sir.

Q. Is he present now? A. Yes, sir.

Q. Was he at that meeting?

A. I couldn't be positive; he might have been, but I couldn't swear it. There was such a crowd that it is impossible to recall the individuals there so long ago.

Q. You couldn't recall then, the names of the people present at that Sunday meeting?

A. No, sir; I couldn't I had a friend that I was talking to with me—sat opposite me but I can't even remember his name.

Q. On the 6th, the next day after the Sunday meeting, being the date of the meeting at the school house, I wish you would state to what extent, if any, the stores in Hart-
2122 ford were closed?

A. Why, I believe that we all practically closed that day, to my best recollection.

Q. What was the purpose of the closing, as you understood it?

A. Why, the purpose was for the business men and miners in general to proceed to Prairie Creek I suppose and protest against the operation of an open shop mine. I believe that was my understanding of it as near as I can recollect.

Q. State whether or not the business men had any interest in the matter except to aid the union miners carry out their wishes to keep a non-union mine from being opened?

A. Why, it was their wish, so far as I know, to use their sympathy with the miners' union.

Q. State whether or not the larger number of stores there at that time had a larger trade from the miners' union, or the members of it, than from other sources?

A. To the best of my belief they were the main support of the business men of the town.

Q. Do you know how many people went from Hartford over to Prairie Creek on the 6th Monday, 6th, of April?

A. No, sir, I don't; there was quite a delegation went.

Q. Did you hear—I am not asking you what you heard at this time—but did you hear what occurred after the people returned from the school house and Prairie Creek mine? I will explain the question a little further. I am not asking you to give an account of any statements made to you, but I am trying to ask you if you received information—or obtained information after people returned from Prairie Creek as to what occurred at Prairie Creek during the day?

A. Why, there was speeches made and influence used
2123 to induce the men that were there, I suppose the non-union men to quit work.

Q. Did you hear anything about what success they had?

A. I understood that the non-union men decided peaceably with possibly one or two exceptions, to not work there. That was about the information that I understood.

Q. Do you know whether you were talking with any of the union miners in regard to it or not, and if so, state what they said about it?

A. I can't recall any particular instances if I did.

Q. Did you remain in your business as heretofore stated, during the months of April, May, June, & July in Hartford?

A. Yes, sir.

Q. Were you in Hartford on July 16th when further trouble occurred over at Prairie Creek?

A. Yes, sir.

Q. Were you there on the day and night before that trouble? A. Yes, sir.

Q. State whether or not you saw any persons with guns in Hartford on the day or night before the big trouble on July 17?

A. No, sir, I don't think I saw anybody with guns at all.

Q. Did you repair any rifles for any strangers about that time?

A. Well, on the 17th, I repaired the injector of a rifle for a stranger; some stranger—two strangers came in there.

Q. Did you know the men at all?

A. No, sir, I did not.

Q. What kind of rifles were they?

A. Well, I can't remember the name of the rifles,—a high powered gun.

Q. What time of the day of the 17th, was it?

2124 A. Well, to my best recollection it was about one or two o'clock somewhere along the middle of the day.

Q. Did you learn from the men where they had been during the day? A. No, sir.

Q. Did you learn where they were going?

A. No, sir.

Q. On the night of July 16th, preceding the great trouble on the 17th, state whether or not there were any crowds on the streets of Hartford?

A. There was some excitement—some people stirring around that evening, although I wasn't out very much of it, either at home or at my place of business.

Q. What was the excitement about?

A. Well, stories had been circulated in Hartford that Frogtown had been shot up and that some men were coming in from Prairie Creek to shoot up Hartford.

Q. Who circulated those stories as near as you can tell?

A. I couldn't say; general rumor.

Q. They were pretty well circulated were they, in Hartford?

A. Yes, sir, I think they were pretty well circulated.

Q. What did the crowd propose to do with the men that were coming from Prairie Creek to shoot up Hartford?

A. I don't know.

Q. Mr. Tyler, state whether or not the business men at Hartford felt that they should do [any] nothing to antagonize the miners' union, but should so far as possible, comply with the wishes of the miners' union?

A. Well, so far as I was concerned I felt that way, in
2125 fact all the business men did.

Q. Did you practically close your store on April 6th?

A. Yes, sir.

Q. Was that your reason for closing?

A. Yes, sir.

Q. You were in a town, the larger part of the patronage of which was from the coal miners' union, or members of the union? A. Yes, sir.

Q. And you didn't want to do anything to antagonize that union? A. No, sir.

Q. Was there any non-union coal mine in that community other than the Bache-Denman properties?

A. No, sir, none that I know of.

Q. Did you know of any coal miners living in there and doing work except the union men?

A. No, sir; I did not.

Q. Did you see on July 16th, in the afternoon or at night any men with rifles or guns or pistols in Hartford?

A. No, sir; I did not.

Q. Did you see men passing along the street more than usual on that night or that afternoon?

A. Well, I think there was a little more excitement—a little more passing than usual, but not so very much that I noticed.

Q. Did you hear from any of the coal miners' union or any other people there that they were going to make an attack on Prairie Creek? A. No, sir.

Q. Did you hear the shooting over at Prairie Creek?

A. At times I heard some few shots during the day or morning that is, I supposed it was.

2126 Q. What direction were those shots from Hartford? In other words, were those shots in the direction of Prairie Creek, or were they in some other direction?

A. They were in the direction of Prairie Creek mine.

Q. Could you tell from the shots the kind of guns that were being fired? A. No, sir.

Q. You were not familiar enough with shots to be able to tell that? A. No, sir.

Q. Could you tell whether there were only a few, or whether the number was large?

A. I couldn't say. [tell]

Q. Did you see the smoke of the burning tipple at Prairie Creek? A. No, sir.

Q. Did you learn during the day that there had been a battle over there at Prairie Creek?

A. Yes, sir, it was rumored.

Q. From whom did you learn it?

A. Well, I couldn't say in particular; there was rumor over there in town. Mr. Cole, my man that was working for me, went out that way and came back. He said—he told me there was rumors of that but he didn't say much of anything that I know.

Q. Did you on the day of the 17th, see Mr. Slankard, one of the defendants, who is present in the room here?

A. I couldn't be positive whether I did or not. I presume [it] he was there I seen him, but I couldn't say.

Q. You don't remember of having seen him on that day?

A. No, sir.

Q. You knew him well then, didn't you?

2127 A. Yes, sir."

"Cross-Examination

By Mr. Love Grant:

Q. Mr. Tyler, do you remember the night Frogtown was shot up and the women came into Hartford that night?

A. Yes, sir.

Q. Where were you that night?

A. I was home.

Q. About what time of night did people arrive from Frogtown?

A. I couldn't say as to that. When I got up the next morning there was some people camped to the southeast of my lot kind on in the street by where I lived.

Q. Right near your home in Hartford?

A. Yes, sir.

Q. There was a great uproar about the trouble at Frogtown the night before; women and children had driven across there with their night clothes?

A. There was considerable talk.

Q. Did you talk with those people camped near your house? A. No, sir; I did not.

Q. Isn't it a fact that the citizens established guards around Hartford to keep from being attacked by these Prairie Creek people?

A. I understood there was some guards out.
Q. They were out there for that purpose?
A. Yes, sir.
Q. To guard the town against possible attack from these Prairie Creek people? A. Yes, sir.

2128 "Redirect Examination

By Mr. McDonough:
Q. Mr. Tyler, did you have any apprehension or feeling that any people would come from Prairie Creek to Hartford?
A. No, I didn't have very much apprehension about it."

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2129 Mr. Lucas: We will offer in evidence and consider as read the depositon of WILLIAM FRANCIS MEEKS in the record of the former trial, found on page 1718 to 1740, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:
"Q. What is your name?
A. William Francis Meeks.
Q. Where do you live? A. Fort Smith.
Q. What address?
A. 202 North Sixth Street; that is where I was working when called out in the service.
Q. What is your present occupation?
A. Sergeant in the National Guard—Company D. Second Arkansas.
Q. When did you first go into the National Guard?
2130 A. September 13, 1916.
Q. Did you go to the Border? A. I did.
Q. How long were you at the Border?

A. From September 17th—I think I got there on the 17th —and remained there until the 18th of December, 1916, and sent back—the First Arkansas in the Recruiting service got back the 28th of January, 1917.

Q. Back to Deming?

A. Yes, Deming, New Mexico.

Q. When did you leave the service?

A. The 9th of March.

Q. What did you do after you were mustered out?

A. I was at Hartford on a vacation for a month or so.

Q. Then what work did you take up?

A. Went to Nowata, Oklahoma, and took a job as bill clerk for the Iron Mountain.

Q. Were you at some time soon after that made bill clerk at the Rock Island Station at Hartford?

A. Previous to that.

Q. When were you bill clerk at the Rock Island Station at Hartford?

A. 1913 to July 31, quit July 31, 1916.

Q. You began there when?

A. August 1st, 1913.

Q. Do you recall one night when you were Clerk at the Rock Island station, in the spring or summer of 1914,
2131 seeing some trouble at Berson's Restaurant in Hartford? A. Yes, sir.

Q. Will you state the details of what you saw and heard there at that time?

A. I was going to the Post Office for my mail on the evening the trouble came up at Berson's Restaurant. I do not know just what time, but it was between six and eight or nine o'clock probably between six and eight, I don't know the date, never paid any attention to particularly—I saw a crowd in front of Berson's restaurant.

Q. How many men?

A. Ten or fifteen men.

Q. All right.

A. I do not know any of their names outside of Jim McNamara.

Q. What did you see Jim McNamara do?

A. I saw him pull this fellow Argo—I don't know his name —from the restaurant, and pushed him and kicked him on the streets.

Q. Was Argo down on the ground?

A. I think he knocked him down.

Q. Did you hear any conversation between Argo and McNamara?

A. I believe I heard him tell him, I believe I heard Argo tell him that he had quit the Bache-Denman Coal Company he had been working for and that he was going home, or on his way home to his wife somewhere, I did not know where it was at that time; and he asked Jim to let him alone.

Q. What did McNamara say to Argo?

2132 A. McNamara made the remark that he ought to kill the scabbing son of a bitch, or something like that; I believe that is about what he said; a few remarks made in that line was all I heard said.

Q. What did you do then?

A. Argo, I am not positive whether the City Marshal took him back to El Dorado Drug Store, about a block and a half north of Berson's restaurant or whether he went back—anyway I followed the mob or crowd followed Argo down there. Argo was in the rear of the restaurant talking to Dr. Chambers.

Q. The rear of the drug store?

A. Yes; Dr. Chambers had his office in the rear of the drug store.

Q. West's Drug Store?

A. West's Drug Store; I don't remember whether Argo was bleeding or not, but it strikes me that he was; I am not sure.

Q. Was Sell Goddard there?

A. He came in, he was there, anyway Sell and I walked with Argo immediately after he was talking to Dr. Chambers, to the depot of the Rock Island and remained there until train 41 went west about eight or eight-fifteen o'clock, the schedule at that time.

Q. Did Argo get on that train?

A. Yes, sir; he got on the train and left.

Q. Do you remember the date of Monday, April 6, that year, when there was some kind of meeting at the school house at Prairie Creek?

2133 A. I remember the meeting, yes, sir.

Q. Did you go out to Prairie Creek school house on that day? A. Yes, in the afternoon.

Q. How did you know about this meeting?

A. I heard people talking, several statements on the streets that they were going to have a meeting of some kind out there.

Q. What did you see when you got out there, and what did you hear?

A. Well, there looked to be about a thousand or two thousand people there; and there was, I believe, Miss Hogam.

Q. Can you identify her?

A. She is a blond and wore glasses and red hair as well as I remember.

Q. Do you remember whether it was Freda Hogan?

A. Freda Hogan, I believe that is her.

Q. Did you hear her make a speech?

A. Yes.

Q. What did she say?

A. Something in regard to the trouble at that time between the United Mine Workers and Bache-Denman Coal Company No. 4 Prairie Creek. I do not know the words she said, but (I don't know what you might call it) she was making remarks of that kind in behalf of the United Mine Workers.

Q. What was the general tenor of her remarks, if you cannot speak the words precisely, what is your best recollection of what she said in general?

2134 A. I do not know as I can recall any sentence, and exact words she repeated.

Q. Without trying to recall any words or sentence, what is your recollection of what she said in your own words?

A. Well, she was there for the purpose of getting the sentiments of the citizens and people around Huntington, Midland and Hartford in order to show to the Company that they wanted to be recognized and wanted different conditions at Mine No. 4. She made remarks along that line.

Q. Did you hear anyone else make a speech?

A. James Slankard, I believe, made a speech. I believe I heard him say a few words in regard to appointing a committee at that time, I do not remember the name the Superintendent of Mine No. four. I do not know his name, I saw him later, after the speaking, after the crowd had already gone from there, I saw this Superintendent.

Q. Was his name Cameron?

A. It appears that is his name, about 45 years old, looked to be.

Q. You say Jim Slankard spoke a few words about appointing a committee to go down to the mine to see the Superintendent? A. Yes, sir.

Q. Did you hear anyone else up there at the school house make a speech?

A. James McNamara, I believe, said a few words
2135 along the same line as Miss Hogan and James Slankard.

Q. Who seemed to be the chairman of the meeting if there was one?

A. I don't know who was Chairman, but James Slankard, it seemed like, was leading one to get the committee to see the Superintendent of the mine.

Q. Was there anything said at that meeting about going over to No. Four and ask the men to quit work?

A. That was mentioned in both statements, James Slankard and James McNamara; I know they made these remarks.

Q. Do you know whether or not a committee was appointed?

A. I did not see nor hear the Committee appointed, but a committee was appointed.

Q. Do you know who was on that committee?

A. I do not.

Q. Did the crowd at any time go over towards the mines?

A. They did immediately after the speaking.

Q. Did you go with the crowd?

A. I went with the crowd.

Q. Do you know where this crowd came from?

A. It came from Huntington, Midland, and Hartford, all those mining towns around there, they were represented.

Q. Was there a band there? A. Yes, sir.

Q. Do you know where that band came from?

A. I believe it came from Huntington, Arkansas.

2136 Q. Did you see a banner and flag?

A. I saw [onw] United States flag. I did not see any other that I remember of; I do not recall seeing any other flag.

Q. You say there were between a thousand and two thousand people at and around the school house? A. Yes, sir.

Q. Who made up that crowd; I mean who comprised the crowd?

A. Who called the crowd out?

Q. No, what was the crowd composed of, what people?

A. The miners and citizens, miners and business men all three of the towns, Midland, Hartford and Huntington, they were business men from both towns and farmers from out around these towns, miners from all three of the towns.

Q. Now, state, without my having to ask you any detail questions, what you saw at the time when you say you followed the crowd to the mine?

A. After that, there was some fellow with me, I don't know exactly who went with me, cannot recall the fellow; we heard they were having a meeting out there, and some fellow insisted on my driving out with him, and I left the office and went out there where they were at this old school house. When

we got there, there were several speeches made, and a committes appointed to go to see the Superintendent and they appointed this committee, some one did, I don't scarcely know who, but they went to Mine No. 4 where the Company was working, and the people were waiting at the school
2137 house until they could return from the Superintendent of the mine, but they didn't wait.

Q. How did you know they were to do that? Go ahead and tell just what happened as if you were writing a letter about it?

A. The people were waiting until they could get some definite answer from the Superintendent through the committee, but they didn't do that. They moved on over towards the mine. I followed them. There was the office sitting right off—the mine sits northeast from the school house, and the office was between the school house and the mines where the people made this statement.

Q. How far was the office from the mine?

A. Looked to be about two or three hundred yards, something like that; and James Slankard told the people not to make a rush towards the mine; to stay back across the rope. At that time there was a rope stretched around the mine, steel rope around the office and also the mines; and the people gathered around this rope, all around. There was two guards standing on the inside of the rope in front with rifles. The mine up here was operating, smoke coming from the flues, the fire in the furnace. I don't remember whether they were hoisting coal or not; but in the meantime the guard, this big one-eyed fellow who weighed about two hundred pounds (I don't know his name)—the guard was standing over north east of the office (the majority of the people were there) and I was on the southwest of the office just back of the majority of the people, and I heard the question asked this big guard how long he had been in that kind of business. (I did not know what they meant.) He replied, that he had been there fifteen years and had never got hurt nor shot. Then
2138 the question was asked if he thought he could get by in Arkansas guarding scabs. He said he was not expecting any trouble, and felt safe. In the meantime three or four fellows rushed under the rope and over the rope and grabbed his rifle. He had his rifle, I don't remember whether he had it "present arms" or "order arms", or where, but had a rifle in his hand.

Q. Was he pointing the rifle at anybody?

A. No, sir.

Q. Did you at any time see him point the rifle at anybody or use it any way?

A. No, sir, just had the rifle in his hand something like this (indicating port arms). I do not know who the fellows names that rushed in there, but they were three or four fellows looked to be foreigners some of them, looked to be foreigners and American men. Some fellow took the gun from him and smashed him over the head with it and knocked him down. By that time there was eight or ten fellows around. In the meantime the other crowd was standing about ten or fifteen paces rushed on him and beat him up. This other fellow (not the one-eyed big fellow) rushed in by me to the office. Four or five grabbed him and struck him in the face, one or two after him. I do not know just how they did, but anyway people went over the fence and rushed up to the mines and had him pull the fire or furnace, pull the fire.

Q. Do you know the man's name that was firing?

A. I don't know the man's name, but the man super-
2139 vising was named Looper.

Q. How old a man was Looper?

A. Looked to be between forty and fifty years old. Looper told them if they would not hurt them in any way, he would pull the fires of the furnace and quit?

Q. Did they threaten him?

A. They threatened him and told him they had a good mind to throw him into the furnace and burn them up and the rest of them, and the fire was pulled. Maybe after the fire was pulled from the furnace, Mr. Looper walked out of the boiler room and was standing talking. There was three or four or five fellows standing talking to him, and fifty or seventy-five around him, and there were several questions asked him why he was scabbing when he knew he ought not to, or something. By that time some big fellow hit him and knocked him down and they were beating him; and Louis Fiorretti and myself rushed through the crowd and pushed the crowd back. I recognized the one big fellow just standing over fixing to stomp him, and I pushed him back, and Fiorettis assisted Looper to get up and taken him away, and the City Marshal, Louis Fioretti and I went back. In the meantime I heard the hollowing just one fellow, I don't know who, away from the mine, I suppose he was a laborer of some kind around the furnace.

Q. Did you sell or hear Jim Slankard while he was on a flat car around the platform, while the crowd was rushing the mine, as you say, making a speech?

A. Yes, I did. I heard him tell the people to wait till
2140 they got a decision from the committee and not rush in on the mine and destroy it anyway, property, anyway. They were waiting on the decision but they didn't do it.

Q. Did you hear him make any announcement that the Superintendent had agreed to shut the mine down?
A. Yes, he did.
Q. When was that?
A. That was at the time he made the remark that he thought the Superintendent had agreed to shut down and to stay back.
Q. Was that before or after?
[—]
[A.] Was that before the time or after the time when you and Louis Fioretti pulled the crowd off of Looper?
A. That was before.
Q. How long before?
A. Twenty or thirty minutes, I guess.
Q. At the same time, during the spring of 1914, did you see two fellows in the streets of Hartford in some trouble with a man named Roy Smith? A. Yes, sir.
Q. Tell the court all about that?
A. I was in the streets in front of the Jewel Theatre.
Q. When was that?
A. It was along about sometime about this trouble; same year.
Q. State what you saw?
A. There was some fellow walking down the street inquiring of several fellows where No. 4 Prairie Creek was; some of them asked him why he wanted to know, and he
2141 said he was from Pennsylvania somewhere; came down over the Midland Valley and they put him off at Hartford instead of Prairie Creek; and this Roy Smith rushed in on him and knocked him down and called him a scab and had no business in there, to get out of town and not to go to Prairie Creek but leave the country, and they found a razor on this fellow is about all.
Q. Did he have the razor out using it?
A. No, sir.
Q. Found it in his pocket?
A. Yes, sir.
Q. Did they take the razor away from him?
A. I don't remember whether they did or not.
Q. Where did Roy Smith work if you know?
A. I believe he was working at No. 4 Central.
Q. Anything else?
A. This Smith fellow went to the barber shop, I saw him in there later, and I never saw him after that in Hartford that night.
Q. Do you remember one night hearing Pete Stewart make a speech? A. Yes, sir.

Q. State what you know about that.

A. That was the time that Judge Little, Mell Dodd, Pete Stewart, and Mrs. Johnson, the editor of the Hartford Observer, was there.

Q. Who made the speeches?

A. Pete Stewart, Judge Little, and Mell Dodd, I believe that is all I heard.

2142 Q. What was the occasion of the meeting—what kind of meeting was it, if you know?

A. I suppose it was a kind of political meeting.

Q. That is what you gathered?

A. From the tone of the speeches.

Q. Did you see Jim Slankard there?

A. I don't know, but I believe he was there.

Q. Where was the meeting held?

A. Held above the old Oliver Meat Market in the Old Eagles Hall in a frame building up stairs.

Q. How many men up there?

A. About one hundred.

Q. Who composed the audience?

A. A few business men of Hartford and miners.

Q. Now, state, as well as you can remember, what Pete Stewart said at that meeting.

A. He made some remark about the Union men and their wives and children being run over by scabs and being shot and chased around; and he made the statement that if the Company, Bache-Denman Coal Company, allowed such to be carried on with guns and ammunition he would see that his men would be protected by letting them have the same.

Q. Do you remember anything further that he said? Do you remember whether he said anything about Colorado?

A. Yes, I believe he made the remark that Union men or their fellows were not going to be treated like Colorado

2143 Union men and their fellows were treated.

Q. How long had you known Pete Stewart?

A. I have known of him ever since I have been in Hartford.

Q. How long had you lived in Hartford?

A. Went there in 1911, and in and out of there until 1916.

Q. Do you know what position Pete Stewart held in the Union? A. No, sir; I do not know his office.

Q. How old a man was he?

A. He looked to be about fifty years old.

Q. Do you know whether he was a son Pete Stewart, called Little Pete?

A. There is a little Pete there at Hartford; I don't know whether he is his son.

Q. That was not little Pete?
A. No, sir; it was old Pete.
Q. Do you remember the day of the big trouble there—when they had some big trouble there at Prairie Creek?
A. Yes, sir.
Q. July 17th? A. Yes, sir.
Q. Were you in Hartford the night before that?
A. Yes sir.
Q. On the streets? A. Yes sir.
Q. Whom do you remember seeing on the streets that night? A. Several men.
2144 Q. What kind of men?
A. They were foreigners, miners, foreign miners, miner Americans but citizens and business men.
Q. Did you see any men with guns that night?
A. Yes, sir.
Q. How many?
A. I don't know; I saw quote a good many guns.
[A.] Approximately how many men with guns did you see? A. From about ten to twenty-five.
Q. Do you remember any particular men you saw with guns, by name?
A. There was one fellow there, I know his face; they said he was a half brother to James McNamara.
Q. Did he have a gun? A. Yes, sir.
Q. Describe him?
A. He looked to weigh about one hundred and sixty or seventy pounds with Sandy hair; looked to be about six feet tall, and red complected?
Q. Sandy or red?
A. It was red, it was sandy hair, looked to be about six feet tall.
Q. Do you know where he worked?
A. He worked at No. 4 mine I believe.
Q. No. 4 Central? A. Yes, sir.
2145 Q. Do you know Sandy Robertson? A. Yes, sir.
Q. It was not Sandy?
A. No, sir, it was not Sandy.
Q. Did you see Jim McNamara on the streets that night?
A. Yes, sir.
Q. What was he doing?
A. He seemed to be gathering ammunition.
Q. What?
A. Getting ammunition for the men with shot guns and rifles, as if they were going some place.
Q. What did you say they had in that connection?

A. They were in the Hartford Hardware store getting ammunition out.

Q. What was Jim McNamara doing?

A. He was keeping check; checking it to them; there was some one with him but I don't know who he was.

Q. Was the Hartford Hardware store open?

A. Yes, sir, the doors were open.

Q. Was that Smoot's store?

A. He was the manager of it.

Q. Was Smoot there?

A. I don't know; I don't think he was; I did not see him; never saw Smoot.

Q. You saw McNamara checking out ammunition to parties.

A. Parties out there went in there, men come in for
2146 ammunition with guns in their hands and come out of the door, I cannot call any names. And parties up the street,—There was the usual confusion [abong] men on the streets.

Q. These men that were going in with guns were supplied with ammunition and went out? A. Yes, sir.

Q. What did you hear on the streets in Hartford that night about what was going to happen at No. Four?

A. It seemed like—

Q. What did you hear?

A. The men who got ammunition to go to No. Four mine.

Q. You heard they were getting ammunition to go to No. Four mine? A. Yes, sir.

Q. From whom did you hear this?

A. I cannot recall any name.

Q. What was the occupation of these men? A. Miners.

Q. You knew them but cannot recall their names?

A. Yes, but I cannot recall names; scarcely know them; just as I would see them go by the office.

Q. You did know they were miners? A. Yes, sir.

Q. Were they so called scab miners?

A. No, sir, there was not at that time any so-called scab miners there.

2147 Q. All United Mine Workers?

A. Yes, sir, I heard them say they would not allow a man to light in town if they knew he was a scab; I heard that remark made.

Q. By whom? A. Different men.

Q. By miners? A. Yes, sir.

Q. And by men you knew to be union men?

A. They evidently were; I did not know them to be; I would not think they would make such remarks if they were not.

Q. Now on the day of the battle; did you see some women and children brought into Hartford? A. Yes, sir.

Q. State what you saw in that connection?

A. I was standing on the corner near the Central Coal and Coke Company Commissary and saw some women and children and men. I don't know how many, going into Hartford from the direction of No. four Prairie Creek at the time this trouble was going on.

Q. About what time of day was it?

A. It was in the afternoon, if I am not mistaken.

Q. What did you see done in that connection?

A. There were men with them I believe; this preacher Strope was with them. He didn't have any gun. There were one or two that did have guns.

Q. What did they do with these women and children?

2148 A. I don't remember what they did with them. In fact I don't know what they did with them at that time; They were going across the street with them, and later they were making calculations to feed them among the citizens and business men of Hartford, to make up the money. I don't know whether they got up the money for them to get out of town or had money; they got money some way, and came to the office of the Rock Island and bought tickets two men. Didn't buy tickets for the women, but two men in the crowd got tickets for two men to Dayton, Tennessee.

Q. Who got transportation for these two men?

A. The Mayor of Hartford, at that time, was in the office with them and one or two others.

Q. What is his name? A. John Conroy.

Q. Who were with Mayor Conroy?

A. These two men that brought them in the office.

Q. The two men for whom tickets were bought?

A. Yes, sir.

Q. What other citizens of Hartford, miners or anybody else were there with Mayor Conroy?

A. I do not remember now. I believe Cell Goddard, the City Marshal, and probably one or two others.

Q. If you remember, state who bought the tickets for those two men to Dayton, Tennessee?

A. The tickets were handed, if I am not mistaken, to

2149 Mr. Conroy for those men.

Q. Handed by the ticket agent? A. Yes, sir.

Q. Who was the ticket agent at that time?

A. The records will show—I was working in the office.
Q. You were at the office when those tickets were handed out? A. Yes, sir.
Q. The morning of the battle, did you see some men with guns in the streets of Hartford?
A. Well, I saw two or three but the majority of them were all out of Hartford. There were scarcely any men to amount to anything, outside of the business men.
Q. Where did you go on the morning of the battle?
A. I was in the Central Office the morning of the battle, telephone office, for a few minutes.
Q. What did you see while there?
A. Central, the telephone rang, she answered the telephone and turned around to me and said that a message came in there to send men and ammunition out to No. Four mine, I don't remember the remarks word for word she made, and I told her she had better leave it alone and not have anything to do with it. I wasn't her boss at all.
Q. Who was the operator?
A. Then I was looking out of the window at the smoke rising from the mine.
Q. How high is the office?
A. A two story building.
2150 Q. Who was the operator?
A. Rena Jennings is the name of the central operator.
Q. Is she at Hartford now? A. Yes, sir."

Mr. Neal (reading):

Cross-Examination

By Mr. Covington:
"Q. What is your home? A. Tennessee.
Q. What part of Tennessee? A. Coal Mont.
Q. When did you leave there?
A. August 24th, 1911.
Q. Where did you go from there?
A. Chattanooga, Tennessee.
Q. How long did you remain there? A. [Teo] days
Q. Where did you go from there?
A. To Temple, Texas.
Q. How long did you remain in Temple, Texas?
A. Four days or a week.
Q. Where did you go from Temple, Texas?
A. To McAlester, Oklahoma.
Q. How long did you remain in McAlester.
A. Four or five months.

Q. What did you do in McAlester?
2151 A. I worked at No. Two coal mine.
Q. In what capacity? A. Mule driver.
Q. What are your initials?
A. William Francis Meeks.
Q. By whom was that coal mine operated?
A. A fellow by the name of Jones.
Q. Where did you go from there?
A. From there to Hartford, Arkansas.
Q. Did you belong to the United Mine Workers while you worked in the mines?
A. I had a card, yes, sir, at that time.
Q. How long were you an active member of the United Mine Workers?
A. Just while working at McAlester.
Q. Did you, at any time, during the four or five months you worked in the mine, enter into any agreement with your employer, or any other coal operator, to commit murder or arson to keep non union coal off the market? A. No, sir.
Q. Did you enter into a conspiracy with your employer or enter into any contract, agreement or understanding with your Coal Company that you worked for or any other person or persons engaged in producing coal with union labor to go out and comit acts of violence or lawlessness, or commit murder or arson to get rid of the mines producing non-union coal?
2152 A. No, sir.
Q. You didn't do that? A. No, sir.
Q. You never heard of that? A. Not at that time.
Q. You attended the meetings of the Local?
A. No, sir.
Q. What kind of a member were you, tell us?
A. I carried a card is all, I was a kind working for a living and had to have a card to work at the mine.
Q. You never attended at all? A. No, sir.
Q. You say you were a kid, how old were you?
A. Eighteen years old.
Q. Pretty good sized kid? A. Yes, sir.
Q. How long have you been in Fort Smith?
A. I have been in Fort Smith since June.
Q. You have never testified in any of the litigation [growint] out of the trouble at Prairie Creek? A. No, sir.
Q. Neither criminal nor civil? A. No, sir.
Q. When did you first give the plaintiff information of your knowledge of the various affairs to which you have testified?

2153 A. I never gave any.

Q. Do you know how they found out what you knew about this case? A. No, sir.

Q. You were never talked to by anybody? A. No, sir.

Q. Are you acquainted with Mr. Finley, receiver in this case? A. No, sir.

Q. Do you know Mr. Hilliard, the other receiver in this case? A. No, sir.

Q. Were you acquainted with Roger B. Hull, former assistant United States Attorney General.

A. No, sir; the first time I saw him was three or four days ago.

Q. Are you acquainted with Childs & Childs of Chicago?

A. No, sir.

Q. Do you know Henry S. Drinker? A. No, sir.

Q. You do not know anybody connected with it?

A. Absolutely no, sir.

Q. Were you in the fight out there on the 17th of July, 1914? A. No, sir.

Q. You are certain of that? A. I am positive.

Q. You are sure of that? A. Yes, sir.

Q. Did you have a gun on that day? A. No, sir.

2154 Q. Is it not a fact that Cell Goddard, the town marshal, got a lot of citizens to get guns to guard the town that night? A. Yes, sir.

Q. That information had come in that the guards at No. Four mine were going to attack Hartford? A. Yes, sir.

Q. And sent these men out there? A. Yes, sir.

Q. You had a gun that night? A. No, sir.

Q. You were not on duty? A. No, sir.

Q. No?

A. I was on the streets the night citizens had guns, but I did not have a gun.

Q. The merchants and business men were all out there with guns that night? A. Yes, sir.

Q. That was the night before the trouble the next day?

A. I don't remember.

Q. You remember the occasion they shot up Frog Town?

A. Yes.

Q. That was on two different occasions, that it was said Frog Town was shot up; two different nights, wasn't it?

A. The shooting up the—only one I remember began from what they said the citizens guarded the town, said shots began firing about four o'clock in the morning.

2155 Q. You can't tell what they said? I want to know if one or two occasions Frog Town was shot up?

A. I don't remember two different occasions. I remember it was shot up, is all I remember about it.

Q. You say that on this particular night the Hardware store was open? A. Yes, sir.

Q. Who was in charge of the store?

A. I don't know just exactly that night.

Q. That is what I am talking about yes.

A. James McNamara was in there at the time. I don't know whether he was in charge or not; I don't know who was in charge.

Q. Do you remember anybody else? A. No, sir.

Q. Do you know anybody else in town except McNamara?

A. Yes, several.

Q. How many people [—] there were a good many people around there that night? A. Yes, sir.

Q. Can you name any other man?

A. I can name business men.

Q. Name them?

A. There was no business man in there at all.

Q. Where were the business men? A. I do not know.

Q. Jim McNamara is the only man's name you can remember?

2156 A. That is all, yes, sir. There was several men in there.

Q. Who else in Hartford, do you know besides him?

A. Mr Millhone the Post Master; C. A. Brooks, Vice President of the Hartford Bank; Coal Brooks; L. West, Manager of the Eldorado Drug Store; W. J. Hamilton, Manager of the New York Store; Louis Ficretti, Groceryman; Sam Goddard, the City Marshal's father; Sell Goddard, City Marshal; Conroy, the Mayor; Clarence Jean; Rufus Jean; Mr. Suggs of the Central Coal and Coke Company; Professor Herlock; Ashley Hallison, used to be there, but is not there now.

Q. Is that all you know now?

A. I could name several.

Q. Out of the men you named, did you see any of them that night, the night referred to, in which you say they were out there with guns guarding the town?

A. I saw Mr. Herson, Dr. Chambers, I saw him in his office. I saw L. West in the drug store, in his place of business; and Cell Goddard on his post.

Q. You state they seemed to be fixing to go somewhere?

A. Yes, sir.

Q. You inferred that from the fact that they were there with guns? A. Yes, sir.

Q. And getting ammunition?
A. Yes, sir; the men were mumbling something about No. Four Prairie Creek.
2157 Q. You say a report came in that they were going to make an attack on Hartford, and that Cell Goddard was putting out guards that night?
A. Not under those circumstances you asked me about.
Q. I thought they were putting out guards that night?
A. Not this night. Not at that time. They were getting ammunition to go out of town.
Q. When did they put them out?
A. Might have put them out after that. They were not putting out any guards at that time.
Q. When did they put them out; you said that Cell Goddard put out guards to guard the town to protect the town?
A. I know they did but not at this time, the time the ammunition was being gotten out of the hardware store for some purpose.
Q. Were the doors open? A. Yes, sir.
Q. Were not the windows broken open and didn't they go in thru the windows and take it out?
A. I did not see that.
Q. Wasn't Louis Fioreeti out there with a long gun on his shoulder walking up and down the streets?
A. I didn't see him.
Q. You saw Louis Fioreeti didn't you?
A. I don't remember seeing Louis.
Q. At the meeting that you say Judge Paul Little, Mell Dodd, Pete Stewart and others made speeches, I will
2158 ask you if you don't know that was a meeting of the Odd Fellows on a special occasion for the installation of the officers of the Lodge, or Knights of Pythias, or one of the fraternal organizations down there,—were not offers being installed that night, and wasn't that the occasion for their meeting?
A. I don't remember if it was; I do not really believe it was.
Q. You can remember what Pete Stewart said and nothing else that was said?
A. There wasn't anything said in regard to installing of officers.
Q. Don't you know there was a public installation of officers of one of the fraternal organizations that night, and if that was not the purpose and object of the meeting?
A. There wasn't anything mentioned.
Q. Were you there at the time the meeting closed?

A. I wasn't there when they closed, but was there when the three fellows made speeches and went home.

Q. You were there when they met?

A. A crowd was there when I got there.

Q. Who was speaking when you got there?

A. Judge Little, I believe.

Q. You remained during his speech? Who spoke next?

A. Either Pete Stewart or Mell Dodd, I don't remember which.

Q. When Stewart spoke, didn't they call for him for sometime and didn't he decline until they called for him repeatedly?

A. I suppose he was asked to make the speech at the meeting.

2159 Q. You were there?

A. Not while the crowd was there, because I was working and paid no attention really; I understood there was a meeting of some kind and went up to see about it.

Q. Were you not in there when Pete Stewart was called on to make a speech? A. Yes, sir.

Q. Didn't they keep calling for him and didn't he decline at first to make any talk at all?

A. I don't think he did, no, sir.

Q. He just walked out and went to speaking?

A. He was asked; they had a program if I understand it for fellows to speak, called on the same as Dodd.

Q. What did Judge Little say that night in his speech?

A. Judge Little made a very nice talk; I do not just exactly know the tone of his speech there; I don't remember: I think he was really funny in some of his words; made a very fine speech.

Q. All you can remember it seemed to you to be a pretty nice speech?

A. Seemed to be to me; I don't remember just what he was hitting at.

Q. A very nice speech, but you cannot tell what he was talking about? A. No, sir.

Q. What did Mell Dodd say, you heard that?

2160 A. He didn't say scarcely much of anything.

Q. How long did Judge Little talk?

A. Between ten and twenty minutes.

Q. How long did Mell Dodd speak? A. About the same.

Q. How long did Mrs. Johnson talk—did she talk?

A. I didn't hear her.

Q. How long did Pete Stewart speak?

A. About the same.

Q. You cannot remember a thing on earth of what was said except what Pete Stewart said can you?

A. Mell Dodd made a remark something about justice of some kind; I do not know just how he did bring it out, but that sooner or later we would be getting justice, at the end of his speech.

Q. I will ask you if they did not call from the audience for Pete Stewart to tell them something about Prairie Creek, before he got up to speak?

A. Senator, I don't remember hearing that. I was standing in the rear door.

Q. When he started out with his speech, didn't he state to the audience, "I don't know very much about it, except what I have heard; I hear that the guards at Bache-Denman are violating the law." A. Yes, that is what he said.

Q. "I hope they will refrain from it".

A. Yes, he said those words.

2161 Q. And didn't he further say that if there were any miners in the audience there, he wanted them to understand that no violation of the law would be tolerated by the organization? A. Yes, sir.

Q. That audience was composed mainly of women and children, wasn't it? A. Yes, sir.

Q. Now, [Sargent] Meeks, we will go out to Prairie Creek on the 6th of April. I will ask you a few questions about that. You say that Miss Hogan was making a speech when you arrived? A. Yes, sir.

Q. You don't remember what she said in her speech?

A. I will take that all back, she was making a speech of some kind, but she made a speech directly after I arrived there.

Q. Refreshing your memory, I want to ask you if you do not know, that is, if you are not mistaken, about Jim McNamara being present at the school house that day?

A. Can you look back and see what remark I made about Jim McNamara? It seems to me like he was there.

Q. To refresh your [memore], will ask you if old man Howard, after Miss Hogan got thru speaking, did not get up and make a motion that a commitete be appointed to confer with the mine officials, and in response to that, a committee was appointed consisting of his son C. S. Howard, Jim Slankard and John Minnick? A. Old man Howard?

Q. Yes, the old man himself?

2162 A. I did not say Jim McNamara made the motion; I said it was made, by whom, I do not know. A committee was appointed.

Q. You are not certain Jim McNamara was there, are you?

A. Well, I could be mistaken, yes, sir.

Q. Is it not a fact that this gathering called on the 6th of April, 1914, at the school house, referred to in your examination-in-chief, was composed of a great many women and children? A. Yes, sir.

Q. And farmers? A. Yes, sir.

Q. Every class and condition was there?

A. Yes, that is what I said.

Q. The entire country was gathered in there?

A. Yes, sir.

Q. You say about a thousand? A. Yes, sir.

Q. Fifteen hundred or two thousand.

A. Yes, composed, as I said, of farmers, business men, women and children and miners, business men of that country.

Q. There was a good many automobiles? A. Yes, sir.

Q. And wagons and buggies? A. And mules and horses.

Q. Do you know who the big one-eyed fellow you referred to was? A. No, sir; I never saw him before.

Q. You did not know at that time that he was a Burns
2163 detective did you?

A. No, sir; I did not know what he was; that was the first and last time I ever saw him.

Q. Right there at that place? A. Yes, sir.

Q. You did not look right at him all the time, these people standing around? A. I could not see him all the time.

Q. The time you got there, did you just put your eye on him and keep it there, you did not see him all the time after you got there, did you?

A. Well, I do not know as I held my eye on him all the time.

Q. He rather attracted your attention. He looked like a bad man to you didn't he?

A. I did not pay much attention to that.

Q. Wasn't he standing in a threatening attitude, and you thought he was going to shoot some of these people, and you kept watching him?

A. He was standing, if I remember, with a gun in his hand or on his shoulder the first time, had the gun on his shoulder

Q. Then changed it in a shooting position?

A. Port arms or something like that.

Q. As if to strike or shoot?

A. It was in that position, yes, he could do either way.

Q. The reason you kept your eye on him was you thought he was fixing to shoot or hurt somebody.

2164 A. I guess he was, he had the rifle in his hand.

Q. He looked just like the character of man that would do it, didn't he?

A. I suppose he was there for that purpose.

Q. He looked just like a man that would engage in that kind of business?

A. Yes, sir; he was a big ruffian all right.

Q. You say Jim Slankard come out and got on a coal pile or edge of a car and told the crowd to stand back, and not to go over the ropes? A. Yes, sir.

Q. And told them not to bother anything? A. Yes, sir.

Q. They did not bother any property around the mine that day? A. No, sir.

Q. All they did was to take up a United States flag on the tipple? A. Yes, sir.

Q. There was a great many of those boys that lived here in Fort Smith at that time, carried away from here last night, the company? A. Yes, sir.

Q. Some of the defendants in this case were carried away last night? A. Yes, sir. Bill Reed.

Q. They are going out to fight for the same flag they

2165 tacked on the tipple? A. Yes, sir.

Q. You say you were with Louis Fioretti?

A. Yes, sir, I didn't go out there with him; at the time the beating taken place, I was with him.

Q. At the time Looper got struck? A. Yes, sir.

Q. You were with Louis?

A. He was standing close, when this attack, when this fellow made the attack, I said "Let's protect the man and not let him kill him."

Q. And helped push the crowd away? A. Yes, sir.

Q. It is a great pity that Louis didn't have you for a witness in this case; they got judgment against him for assisting in that beating. Did he assist in any way in beating Looper?

A. No, sir.

Q. On the contrary, you say that he tried to keep them off him? A. Yes, sir, he did.

Q. Did you know that Looper got judgment against Louis Fioretti for assisting in beating Looper and aiding in it?

A. He got a case against him. I was brought here in April 1914, to testify in Louis Fioretti's behalf, but was knocked out some way. I didn't testify.

Q. Who brought you here?

2166 A. I was subpoenaed—Louis had me subpoenaed.

Q. The other side had you subpoenaed didn't they?

A. I don't know.

Q. The plaintiff in the case, Looper, had you subpoenaed? This morning in your testimony, Sergeant Meeks, in regard to one situation there was some confusion, at least in my understanding, and I want you to state again, in your own words, what you heard Pete Stewart say at the meeting at the old Eagles Hall.

A. In regard to the organization, as to whether or not they would take any action in self-defense in case they would take action and by supplying—in my own words, I don't know whether—it was a general meaning that men would be supplied with guns if Mr. Bache and Denman would supply their men with guns. Mr. Stewart made the point not to do any violence or bad acts that is unless in self defense. That is about the question asked before.

Q. State again what Pete Stewart said about Colorado, in connection with Colorado.

A. He said he did not want men, women and children of the union men treated as the miners were in Colorado."

Mr. Neal (reading):

Recross Examination

By Mr. Covington:

Q. He said he did not want men women and children slaughtered like they were slaughtered in Colorado?

A. Yes, sir.

Q. He also said he did not want them to violate any

2167 law or use any violence whatever and if there were any miners there he wanted them to understand that the organization would not tolerate that?

A. Would not tolerate it unless in self-defense.

Q. That is, if they acted at all, it must be in self-defense?

A. Yes, sir.

Q. They must do no violence and violate no law?

A. No, sir.

Q. That the organization would not tolerate that?

A. No, sir.

Q. And the only mention he made of Colorado was that he did not want men women and children slaughtered there like they were in Colorado?

A. Yes, I think that is about the same as before."

Witness excused.

Mr. Lucas: We will offer in evidence and consider as read the deposition of J. K. THRASHER, in the record of the former trial on pages 1839 to 1845, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evi-
dence has no probative effect, is incompetent and im-
2168 material, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. Hull:

"Q. Will you state from your best recollections names of any you saw in that crowd you knew where Barnes and Bailey were beaten up?

A. Well, now, I don't exactly get the idea but in the crowd, of course at the time these two were being beat up, I couldn't state anybody that was around them.

Q. Will you state the names of any persons who you know, who as you say rushed on to the men at that time?

A. Well, there was Charley Clayborn, Clint Burris, John Manick, Jas. Slankard, Fred Wooter, Everet Wooter, Joe Oberman. Now that's all that I know positive that I saw.

Q. No they were on the mine property?

A. Now, that is all I know positive now but at that time, the entire amount is on the list that was made.

Q. I show you for the purpose of refreshing your recollection a list and ask you if by looking that list over you couldn't state positively the names of any other men who you saw on the mine property and within the mine inclosure on April 6th.

A. Yes, here's Jim Walker, Sandy Robinson, Dick
2169 Blair, Jesse Griffin, Fred Hogan, I saw them for good, U. S. Buzan.

Mr. Grant: Who is that U. S. Buzan?

A. Our merchant down here.

Q. Do you remember his being there?

A. Yes, sir, Gus Reeves, Leo Bock, and Jim Lee, Jim Meeks,—

Q. You now have a present recollection of having seen these men on the mine there that day?

A. Yes, in fact that entire list, I stood at the window and called the names and W. H. Argo wrote them down.

Q. Well there are about a hundred and forty or a hundred and fifty names this list, aren't there?

A. I don't know what, something like that.

Q. And you have simply called off of this list to Argo, those whom you remember were there? A. Yes, sir."

"Q. I show you, Mr. Thrasher, a bundle of papers bound together, each one on a printed form headed Mine Invoices of the McAlester Fuel Company, McAlester, Oklahoma, and I ask you if you have ever seen these papers, those sheets before?

A. Yes, sir, these are the sheets that I made of coal mine and sheet from No. 4.

Q. During what period?

A. 3/28/1—wait a minute, we better get the 1913, 4/26/1913 to 3/6/1914.

Q. Are these sheets made in your hand writing?

A. ([Leaves] through them.)

2170 Q. I believe he has gone through them before (to Mr. Grant). A. Yes, sir.

Q. Do these invoice sheets represent inclusively all of the shipments made from mine No. 4 during that period?

A. They do.

Q. I show you, Mr. Thrasher, certain summaries—I show you some sheets which are summaries of the shipments made during that period and ask you if you have examined these summaries? A. Yes, sir.

Q. And have you by these summaries, checked these invoice sheets? A. Yes, sir.

Q. I introduce for identification and have you check with these invoice sheets all of the shipments of the Prairie Creek Mine No. 4, during the period in question.

A. I have, yes, sir.

Q. Can you of your personal knowledge from any calculations which you have made from these invoice sheets, state to the court what percentage of those shipments were to consignee outside of the State of Arkansas? A. 86½%.

Q. In other words that 86½% of these invoice shipments you know went outside of the state of Arkansas?

A. Yes, sir.

Cross-Examination

By Mr. Grant:

2171 Q. Mr. Thrasher, the invoice sheets which are referred to as letter A represent shipments made by what coal company?

A. Prairie Creek Coal Mining Company.

Q. All of them are the shipments made by the Prairie Creek Coal Company, are they?

A. Yes, sir.

Q. The documents thus show that these shipments were made, one on March 6, 1914, one March 11, 1914, one March 7, 1914, one March 5, 1914, one March 26, 1914. Those are the correct dates now, are they as shown by these documents?

A. Yes, sir, do you want those two, all of them.

Q. Yes, are the correct dates, you answered that—

A. Yes, sir.

Q. Those dates are shown on the statement of the first five sheets composing Exhibit A, is that correct?

A. Yes, sir.

Q. Now what do the other sheets represent, the other sheets, the succeeding sheets which are larger than the first five, what do they represent?

A. They represent coal shipped to the McAlester Fuel Company on other order.

Q. Can you tell just off-hand what year they were shipped in, all in 1914?

A. No, they go back to 1913.

Q. The sheets showing shipment to the McAlester Fuel Company, showing shipments made between March 26,

2172 1913 and what dates? A. March 1914.

Q. All shipments shown on the sheets composing Exhibit A were made by the Prairie Creek Coal Mining Company, that's true is it? A. Yes, sir.

Q. The first five sheets attached to Exhibit A are bills, statements which show shipments to purchaser in the State of Arkansas, is that true?

A. Well, this one here was no shipment at all.

Q. Describe it, just tell what it is so we can get it straight?

A. Midland Fuel 2181, all slack coal, unloaded and hauled to No. 1, Mammoth, and consumed as boiler coal.

Q. Is that a sale of coal made by the Prairie Creek Coal Mining Company to the Mammoth, vein No. 1?

A. Yes, sir.

Q. What coal company was the purchaser of that load of coal? A. The Mammoth Vein Coal Company, No. 1.

Q. By No. 1 do you mean Mine No. 1 of the Mammoth Vein Coal Company? A. Yes, sir.

Q. The coal shown on the larger sheets of Exhibit A. showing shipment to the McAlester Fuel Company was delivered f. o. b. the cars at what point? A. The mine.

Q. Where, what mine? A. Prairie Creek No. 4.

Q. In Sebastian County, Arkansas?

2173 A. Yes, sir.

Q. Who paid the freight on the coal shipments shown on the larger sheets of exhibit A?

A. The coal was paid at destination by purchaser.

Q. You say coal was paid at destination by purchaser, do you mean freight paid at destination by purchaser?

A. Yes.

Q. You couldn't give the name or names of the persons who were kicking Barnes & Bailey? A. No, sir.

Q. The meeting at the school house that you have testified about was participated in by about how many people, did you say?

A. Probably eight hundred or a thousand.

Q. Do you know the names of all persons composing the meeting? A. No, sir, I don't.

Q. Was the meeting composed entirely of men?

A. Composed of men, women, kids and everybody else, bankers, and merchants and everybody.

Q. Then it was not confined to any particular class of people but generally to the people all over the country?

A. Yes, sir.

Q. Were you a member of the United Mine Workers of America at the time of this disturbance or at any time?

A. No, sir.

Q. Have never been? A. No, sir.

2174 Q. You don't know of your own knowledge whether any person in that audience was a member of the United Mine Workers of America do you?

A. On that day?

Q. Yes, of your own knowledge.

A. Yes, I know part of them were.

Q. Did you ever see them in a meeting of the United Mine Workers of America?

A. No, sir, because I wouldn't be allowed in one of their meetings.

Q. Then when you say that a part of the people who composed the meeting at the school house were members of the United Mine Workers of America, you are basing that upon what you have heard?

A. No, sir, basing that upon the dues that they paid.
Q. Now, can you give me the names of those persons?
A. Well, all of them that worked at No. 4 paid their dues.
Q. I am asking can you give their names?
A. That I absolutely know that belonged to the Union?
Q. Yes.
A. Well, as far as that's concerned, I know that they all did, because I checked off their dues.
Q. What I am asking, can you give their names?
A. This entire bunch that I have named.
Q. That bunch appearing on that exhibit C of your deposition.
A. No, sir, just part of them. Joe Overman is in that list and he didn't belong, Freda Hogan didn't and U. S. Buzan and Slankard.

Q. The other persons that you have named were mem-
2175 bers of the United Mine Workers of America, was that correct? A. Yes, sir.

Q. Now then, can you tell us the names of any one, name of any one who was in that public meeting who belonged to the United Mine Workers of America, District 21, do you know that?
A. Well, that No. 4 local and the locals there was the district 21.
Q. District 21? A. Yes, sir.
Q. Now, are you testifying as to members of the United Mine Workers of America or United Mine Workers of America District 21, I presume you know they are separate organizations? A. No, sir, I don't know.
Q. If they are separate organizations then you don't know to which one they belonged?
A. To District 21, that's all I know. U. M. W. of A. District 21.
Q. Then when you gave your testimony a minute ago to the effect that the persons you have named belonged to United Mine Workers of America, you meant to say United Mine Workers of America, District 21, is that it?
A. What difference, all the same.
Q. How do you know they are the same, what do you know about it, just state that?
A. Why I am not a union man, I don't know.
Q. Then you now mean to say that you didn't know what you were talking about?
2176 A. No, I mean to say they were union men and paid their dues.
Q. To whom?

A. To the secretary of their local, I paid their dues.

Q. Did you collect from every person dues to the local union of United Mine Workers of America or to District 21, United Mine Workers of America or to United Mine Workers of America, now which did you collect for?

A. Both for the local and the district.

Q. Did you collect, for your information, I will state that there has been sued in this case the United Mine Workers of America which is alleged in the complaint to be a national organization covering the entire nation of North America and has also been sued in this same complaint the United Mine Workers of America District 21, which is an organization composed of Arkansas, Oklahoma and Texas and there is also been sued in the same complaint a large number of local unions in the State of Arkansas, and who did you collect dues for the United Mine Workers of America, the national organization of the United Mine Workers of America District 21, the district organization or the local union of United Mine Workers of America, now which did you collect of?

A. Well, I collected 50c, I believe it is 50c per month national and the other one to the district 21.

Q. All of it?

A. I suppose I don't know what they did with it.

Q. Then you didn't collect any for the local?

2177 A. The lists were made out sometimes in three different heads as a rule, it would be national 50c dues $1.50 and then assessment would be the way that the Secretary would turn in his list for the men to be checked off of each individual."

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Mr. Lucas: We will offer in evidence and consider as read the deposition of W. C. HARP, in the record of the former trial, found at pages 1897 to 1902, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Direct Examination

By Mr. McDonough:

"Q. What are your initials, Mr. Harp? A. W. C.

Q. Where do you live?

A. I live here in Joplin.

Q. What business are you engaged in?

A. I am foreman at the mine, Tulsa Lead & Zinc Com-

2178 pany.

Q. Did you ever live in Hartford, Arkansas?

A. Yes, sir.

Q. Were you living there at the time of the mine troubles in 1914, June and July?

A. Yes, sir.

Q. Were you living there at the time of the so-called battle, on July 17, 1914?

A. Yes, I was there all during 1914.

Q. What business were you engaged in at that time?

A. I was in the grocery and meat business.

Q. I wish you would state whether or not on the morning of that battle, July 17, 1914, you were called upon by a committee of union miners requesting you to close your house of business on that day?

A. Well, I don't know now what date that was.

Q. Well, without reference to the exact date, you remember the date when the battle took place, don't you; you remember the battle?

A. Well, this request was made, but I don't think it was made on the day we would speak of the battle.

Q. Well, when was it made with reference to that date?

A. I think it was made a day or two maybe before; however, there was a little trouble out there on the day that we were requested to close.

Q. By whom were you requested to close?

A. By a committee.

2179 Q. A committee of whom?

A. Supposed to be union miners.

Q. Did you know them to be union miners yourself?

A. I knew they claimed to be.

Q. They requested you to close your store?

A. Yes, sir.

Q. For what purpose?

A. Well, to be with them in the, I suppose, raid.

Q. What did they say it was?

A. I don't recollect.

Q. A raid on what?

A. They was supposed to be closed to meet them there at Prairie Creek.

Q. Prairie Creek No. 4? A. Yes, Number 4.

Q. Did you close? A. Yes, sir.

Q. Did you go over there?

A. Yes, sir.

Q. Were you over there on that day that the mines were burned? A. No, sir.

Q. Where were you on that day?

A. I was at Hartford.

Q. Were the business houses closed on that day?

A. No, sir, I think not. I was working for a fellow at that time. Let's see; no, they wasn't closed that day.

2180 I remember of hauling some freight on that day and seeing the smoke.

Q. Hear any guns on that day?

A. Yes, we heard guns.

Q. Could you tell anything about the number of guns that you heard? A. No, could not.

Q. Where was the smoke coming from?

A. Well, we guessed it to be from Number 4; I don't know just where it was from.

Q. Was it in the direction of Number 4?

A. In that direction, yes.

Q. As to the stores being open on that day, that is July 17th, have you any specific recollection on that subject, whether you closed your place of business, or whether you did not?

A. Well, the one date there; it was the first call that was made, the date that Looper was hurt, the stores were closed.

Q. Do you remember that date? What date was it?

A. No, sir, I do not.

Q. But the stores were closed on that day, were they, or were they not, at the request of this committee of union miners?

A. Yes, sir, that is why I closed, the understanding I had.

Q. There was some trouble on that day?

A. Well, there was quite a gathering there and that was the day that Looper was hurt.

Q. Looper was hurt that day?

A. Yes, sir.

2181 Q. Is that the Looper that was the plaintiff in the suit against some people down there?

A. Yes, sir, Ode Looper.

Q. O. T. Looper? A. Yes, sir.

Q. Were you a witness in the Looper case?
A. No, sir.
Q. Were you over at Mine Number 4 after the burning?
A. Yes, sir.
Q. Was it destroyed?
A. Yes, sir, nothing there at all.
Q. What other property was destroyed, if any?
A. How is that?
Q. What other property besides that mine was destroyed. if any other?
A. I saw the Mammoth Vein was gone.
Q. Any other property destroyed?
A. A lot of company houses were gone.
Q. What had become of them?
A. Seemed to have been burned.
Q. How long after the day of the battle were over there at the mine, if you can tell?
A. I couldn't say; I was there quite often.
Q. Were you there on the day of the battle, after the burning? A. I don't know that I were.
2182 Q. Was the fire still there in any of the buildings and mines when you were there?
A. No, sir, I saw no fire.
Q. State what examinations you made as to bullet holes in any of the property about the mines.
A. No, I made none.
Q. Mr. Harp, were you at any meetings, mass meetings, called or held on the night before the battle, or day or two before the battle? A. I was at a mass meeting.
Q. Where was it held?
A. It was held right west of town just acoss the railroad.
Q. Across the railroad from the ball park?
A. Right close to the ball park.
Q. Who presided at that meeting?
A. Well, I don't know exactly who.
Q. Did you know Jim McNamara?
A. Yes, he was one; Charley Robinson was one.
Q. You mean by one, what do you mean?
A. I mean that they were spokesmen.
Q. What did Robinson say?
A. Well, I couldn't state to you.
Q. Give your best recollection of what he said at that meeting?
A. I don't know whether I could tell you a word.
Q. I am not asking you for the words; I want the substance of what he said, what advice, if any, he gave.

2183 A. He meant to clean them up; that is what he meant.
Q. Clean up whom?
A. What he called the "scabs".
Q. That was his advice, was it?
A. Yes, sir.
Q. Now what did McNamara say?
A. It was all of the same substance; that is, put them to flight; that was the substance of the talk.
Q. Did you hear anything at that meeting said about a telephone conversation with Pete Stewart, then president of the district?
A. Well, couldn't tell a thing that was said in regard to it, but it was mentioned.
Q. About how long were you at the meeting, if you could tell?
A. I couldn't tell; I suppose I was there the whole time of the meeting.
Q. Were you at any other meeting, Mr. Harp, besides that?
A. I was at the meeting at Number 4 school house.
Q. I mean a day or two before the battle?
A. No, I think not.
Q. Mr. Harp, state whether or not you are brother of Jesse A. Harp? A. Yes, sir, I am.
Q. State whether or not he was, at one time, County Judge of Sebastian County?
A. Yes, sir, he was.
2184 Q. Your brother lives here in Joplin now? Could you tell, Mr. Harp, give an estimate, your best judgment as to the number of men that were at that meeting, at which McNamara spoke and Robinson spoke?
A. Well, there was quite a crowd; I guess from two hundred to three hundred; I am not much of a guesser at that though.
Q. That is your best estimate of the number, some two or three hundred? A. Yes, sir.
Q. Were there any others that made speeches besides McNamara and Robinsons?
A. I can't call no names that did.

Cross-Examination.

Q. Now can you tell a word that was said by anybody at that meeting? A. No, sir, I cannot.
Q. Then what you have said about putting them to flight is not based upon anything that you heard said there at that meeting at all, is it?
A. That was only the talk; that was just the speaking.

Q. What did they say, and who said it?
A. Robinson was one.
Q. What did Robinsons say; you said you didn't hear a word that he said?
A. I didn't say I never heard a word.
2185 Q. Tell us something he said.
A. I couldn't tell you a word that he said.
Q. Couldn't you tell a word he said?
A. I don't know that I can.
Q. Can you tell a word that McNamara said?
A. Don't know as I could.
Q. Were you there when McNamara was called to the telephone? A. No, sir.
Q. You wasn't there? A. No, sir.
Q. Were you there when he came back, or came on the stage, or into the meeting?
A. I might have been, but not that I know of.
Q. Did you hear him making the announcement to the crowd that he had received a telephone message from Pete Stewart that they must disperse the meeting?
A. I heard it mentioned something in regard to Stewart's message.
Q. I will ask you if that wasn't stated there by McNamara, if McNamara didn't state that he had received a telephone message from Pete Stewart, the president of the district, to disperse the meeting and take no action and have no trouble?
A. There was mention made of Stewart's phone message.
Q. I am asking you what was said about it.
[Q.] I couldn't tell you."

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2186 Mr. Lucas: We offer the stipulation, as it appears in the previous record as to the testimony of Mrs. Eva Trannel, found on page 1572, and her testimony as it appears in the same record at pages 1573 to 1578, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"It is further agreed and stipulated that the testimony as heretofore given by Mr. Eva Trannell, on behalf of the Government in the case of P. R. Stewart et al., vs. The United States of America, and set out in full in the printed record thereof, beginning at bottom of page 486 and ending on page 494, may be read upon the trial of this case by the plaintiffs, the same as if it had been taken by deposition in this cause, subject, however, to any and all objections that may be made by the defendants, or either of them, and it is expressly agreed that any such objections may be made and presented to the court and urged upon the trial of this cause. Roger B.
2187 Hull, Attorneys for plaintiffs. Webb Covington, Attorneys for Defendants.

Mrs. Eva Trannel, a witness sworn for the Government, testified as follows:

Direct-Examination.

By Mr. McDonough:

Q. Where do you live? A. Midland.
Q. Were you living there in July, last month?
A. Yes, sir.
Q. How long have you been living there?
A. I came there in November.
Q. What was your business there, what were you doing?
A. Telephone operator.
Q. At the Midland office?
A. Yes, sir, night operator.
Q. Had you been night operator there during May, June, July and August? A. Yes, sir.
Q. You are night operator?
A. No, sir, not now. I resigned.
Q. Were you the operator there on July 16th and 17th?
A. Yes, sir.
Q. Night Operator?
A. Yes, sir.
Q. The office at Midland is kept open at night, is it?
A. They keep an operator there, but they don't allow anyone in there. They keep an operator there all night.
2188 Q. Business is not transacted through that office?
A. Yes, sir, through the office.
Q. At night? A. Yes, sir.
Q. At that time did people talk over the 'phone from that office?
A. Not from the office but from town. They didn't come to the office.

Q. And you made connection to the 'phone in town?
A. Yes, sir.
Q. On the morning of the 17th, the time of the fight down there, the battle, where were you?
A. I was at Midland.
Q. And what were you doing during that morning—were you on duty during that morning?
A. I went off at 7.30 in the morning.
Q. Did you travel in a buggy that morning anywhere?
A. Yes, sir.
Q. From what place did you go?
A. I went from Midland to Hartford.
Q. Did anybody stop you on the way? A. Yes, sir.
Q. Who was it?
A. Two men. Well, there was some more than two, but I recognize the two.
Q. Were they armed men? A. Yes, sir.
Q. Were they all armed?
2189 A. I didn't pay any attention to only the two that was stopping us there.
Q. Where did you meet them?
A. On the road to Hartford, between Midland and Prairie Creek.
Q. How far from Mine No. 4?
A. I don't just know.
Q. You met the men between Midland and Prairie Creek?
A. Yes, sir.
Q. Who were the two that you recognized?
A. Mr. Dunn and Mr. Burnett.
Q. Pink Dunn and Geo. Burnett? A. Yes, sir.
Q. Were they armed? A. Yes, sir.
Q. What did they say to you, if anything?
A. Mr. Burnett said—told her to turn back, Miss Woodson was with me, and she asked them why, and they said we couldn't go over that road that day, and Miss Woodson said we were going to Hartford, and asked if there wasn't another way we could go and Mr. Burnett said 'no', and Mr. Dunn spoke up and said we could go by Mansfield and told us, and Miss Woodson and I said all right and before we got to the road we heard some shooting, and turned around, and went back.
Q. Did you go back by the place where they stopped you?
A. Yes, sir.

Q. Were they there? A. No, sir.

2190 Q. What were they doing when you saw them?

A. They were just in the road.

Q. Standing there or walking along?

A. Standing there.

Q. When you left them, were they still standing there?

A. I didn't look back to see.

Q. They were not there when you came back?

A. No, sir, they were not there when we came back.

Q. They didn't go in the direction you were going—they didn't follow on afterwards?

A. No, sir, I did not see them any more.

Q. Where did you and Miss Woodson go then?

A. We went back up home.

Q. And remained there during the day? A. Yes, sir.

Q. About what time in the day was it that you returned to town?

A. It was before noon, I don't remember the exact time.

Q. Did you hear any guns—any battle?

A. Not until after we passed them. After we passed them I heard some guns, and we turned around and came back.

Q. Could you tell the direction in which the guns were?

A. No, sir, they sounded like they were towards No. 4; and when we heard the guns we turned around and came back.

Q. Were those fellows facing No. 4 or not?

A. No, sir, they were facing Midland.

Q. The way you were going, that would have led you by No. 4?

A. Yes, sir, it would have led us right by the mine.

2191 Q. By, or near it? A. Yes, sir.

Q. You made no other attempt after you got back to get away that day? A. No, sir.

Q. Before you went off duty on the morning of the 17th, did you receive any long distance telephone calls from over at Hartford and Huntington, or elsewhere, asking you about the battle?

A. Before I went off business—no, sir. We couldn't get anybody on the line. The lines were out of order.

Q. Did you know where the lines had been put out of order? A. No, sir.

Q. The lines were cut, were they?

A. I don't know whether they were or not.

Q. At least they were out of order? A. Yes, sir.

Q. How long had they been out of order?

A. I forget the exact time it happened. I don't remember the time; but it was during the night.

Q. During the night of the 16th?

A. Yes, sir. It was after I was on duty.

Q. I will ask you again, if during the day of the 16th, that is on Thursday, did you hear any telephone conversation concerning this trouble that came up, saying that it was going to take place?

A. No, sir. I did not know anything about it until 4 o'clock in the morning.

2192 Q. Did you have any long distance calls, either the 14th or 15th or 16th of July, from Hartford, that you can now remember? A. No, sir, I don't remember.

Q. Did you have a conversation with Mr. Field with reference to that trouble?

A. Yes, sir. He called me up the morning before and asked me if I knew anything about the trouble out there, and I told him 'no', and he said that he had heard the report and supposed they were having trouble, and I told him that I didn't know anything about it.

Q. What morning was that?

A. It was I don't remember just what day it was.

Q. Was it the morning of the trouble, or before?

A. It was the morning before that they had a regular battle—before the lines were out of order.

Q. On the morning of the battle the lines were out of order? A. Yes, sir.

Q. And this question came from Mr. Field before the lines were out of order?

A. Yes, sir, before the lines were out of order.

Q. Is that right?

A. I don't remember—it was before—

Q. It must have been before, or else you could not have talked?

A. Mr. Field was on a long distance line. It was just the long distance line that was out of order.

Q. Where does Mr. Field live?

A. He lives out in the country on a party line.

2193 Q. He don't live in Midland? A. No, sir.

Q. Are you able to state definitely whether that inquiry from Mr. Field was the day before the battle?

A. Well, I don't remember.

Q. Is Miss Woodson here? A. No, sir, she is sick.

The Court: Where do you live now?

The Witness: Midland.

The Court: Does Miss Woodson live at Midland?

The Witness: Yes, sir.

Q. You know yourself she is ill? A. Yes, sir.
Q. That Miss Woodson is the one that was with you?
A. Yes, sir.
Q. The one that is sick? A. Yes, sir.
Q. Did you, one or two nights before the battle, get a request from the Huntington central station of the telephone company, to get word to Pete McMulland to bring all the men he could get and come to Frogtown at once?
A. No, sir. I had a call for Mr. McMulland, but the operator didn't tell me that. I had a call to Mr. McMulland over at Hartford.
Q. You know Mr. McMulland—who he is? A. Yes, sir.
Q. He is a union miner there?
2194 A. Yes, sir.
Q. An officer of the union?
A. He is a union miner.
Q. Did you not hear that conversation?
A. No, sir, I did not.
Q. You had the call?
A. Yes, sir, but I don't know whether I was on the board when the call was put out, or not. I taken the call through.
Q. That came from Huntington?
A. The call was from Hartford to Mr. McMulland.
Q. I wish you would locate if you can, the exact time when that call came to Mr. McMulland? A. I don't remember.
Q. It was before the day of the battle? A. Yes, sir.
Q. Was it the night before the trouble that the lines were cut? A. Yes, sir. It was before the lines were cut.
Q. Did you hear any conversation on that second night from either Hartford or Huntington, to come to the meeting at Frogtown?
A. No, sir, I don't remember anything like that over the wires.
Q. Did you hear it from any of the union men—not over the wire? A. Did I hear?
Q. Yes; that they were going to have a meeting of union men at Frogtown?
A. No, sir, I don't know anything about any union
2195 men. I didn't know they were going to have any trouble there.
Q. At No. 4?
A. I didn't know it until Mr. Field called me and asked me about it.
Q. I would like to ask you if that call from Mr. McMulland was in the day time or in the night time?

A. I remember of having a call to him, but I go on at 12 o'clock in the day, to relieve the day operator for dinner, and I can't say whether I got it while I was on the board, or after I came on at 5.30 I remember getting the call.

Q. Did you make a memorandum of the party calling for McMulland?

A. No, we just had the number of the telephone.

Q. You had to telephone to Hartford? A. Yes, sir.

Q. From town? Didn't you put the name of the caller?

A. No, sir, we don't, Ft. Smith does that.

Q. Ft. Smith does not record the messages that take place between those two towns?

A. No, sir—yes, sir, because they have a ticket and she gives it to us and we put down the number of the telephone, and the party that is wanted.

Q. If a party calls from Hartford to Midland say somebody at Hartford calls for McMulland at Midland; does Ft. Smith record that call?

A. Yes. She takes the ticket and gives us to him. She gives me the telephone number of Hartford, and Mr. McMulland at Midland.

2196 Q. The office at Ft. Smith puts down the name of the person called?

A. Yes, sir, unless it is a pay station. If we call up a pay station we don't have to take the [same] of the party calling.

Q. Who was standing in the road talking to Burnett and Dunn when you came up to them?

A. There was a man in a buggy, but I don't know him.

Q. An old gentleman, wasn't he?

A. I don't remember. I didn't pay much attention to it.

Q. What was said when you all drove out there? Tell the exact words; who spoke first, and what was said.

A. Mr. Burnett said we would have to turn back, and Miss Woodson said 'what for', and he said well, they were turning everybody back; we couldn't pass over that road that day; and then she said could we go to Hartford, she wanted to go to Hartford, and if there was any other road, and Mr. Burnett said 'no', and Mr. Dunn spoke up and told us to go by Mansfield, and we heard the reports of the guns before we got to the road, and turned back."

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2197 Mr. Drinker: I want to again recall Mr. McAuliffe, as my colleague has suggested some further questions.

EUGENE MCAULIFEE, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. McAuliffe, in the coal business as carried on in Arkansas is there any place to store coal that has been mined?

Mr. Warrum: The defendants object to the question and answer sought, because it is utterly [—] and irrelevant, and would tend to throw no light on any issue in this case.

The Court: Let him answer.

To whic haction and ruling of the court the defendants at the time duly excepted and still except.

A. No, except in cars.

Q. And in the cars, how long can it be stored?

A. Unless billing is furnished the railroad for movement of those cars by five p. m., or thereabouts, on the day which they are loaded, no cars, or a restricted number of cars will be furnished the next day. In other words, the loaded cars will be charged against the number for the next day, or until they are moved.

Q. And does a coal company mine coal until it has a place to dispose of it, until it is sold?

Mr. Warrum: We object to this as calling for a conclusion as to what a mine does, because it is immaterial, and throws no light on the issues in this case.

2198 The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. Constructively the coal company must and should have a disposition for the coal that it loads into the cars ordered on a given day, but sometimes during bad market period it will not have a market for the entire day's output; screenings might be unsalable, while the other sizes there is a sharp demand for. Certain kinds might not be marketed on that day.

Q. But as to the other part—

A. They have a market when the cars are ordered.

By Mr. McDonough:

Q. You mean by market, that it is already sold before it is mined?

A. The disposition will enable them to say to the railroad where the coal is to be billed to.

Q. It is mined on orders? A. Yes, sir.

Cross-Examination

By Mr. Grant:

Q. Is it a fact that they don't have very many of these storage places in this part of the country, to store the coal that is produced from the mine?

A. Practically no mines in this part of the country have storage in the vicinity of the mines.

Q. Now you spoke about the car distribution, what do you mean by that, explain that.

A. The coal cars are distributed by the various rail-
2199 roads to the mines under rules formulated and approved by the Interstate Commerce Commission; there is a measure of uniformity required of the railroads in the matter of distributing cars to the mines and rating cars.

Q. Now, please explain the basis on which cars are distributed to the mines? How do they arrive at how much each mine is entitled to?

A. The mines are rated on or before the 10th of the month, which runs until the 10th of the succeeding month, under the existing rate, in tons capacity per day, and cars are furnished for an amount equivalent to the orders made by the operators, but not of necessity the rated capacity as shown by the railroad records.

Q. Then as I understand it, the operator, when he calls upon the railroad company for cars, does not always get what he wants, but what the railroad can furnish him?

A. He is supposed to get his quota, during a car shortage, that is his quota according to his rated capacity, the same as his neighbor gets.

(Witness Excused.)

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T. A. FREEZE, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Freeze, I hand you a table of figures that I took from your testimony as to the production and the capacity un-
der union and open shop conditions at these various
2200 mines. Will you please state the total production of the six mines under union conditions, as you have testified today?

Mr. Warrum: The defendants renew their objection to this line of testimony?

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. That was the total under union conditions, 4400 tons.
Q. Per day? A. Yes, sir.
Q. And what was the total possible production under open shop? A. 5600 tons.
Q. Per day? A. Yes, sir.

Mr. Drinker: Now, would it be permissible for me to state the figures that have been referred to so often in the opinion of the Supreme Court, in view of the fact that my friend has harped on that so much?

The Court: Ask him any question that you desire to.

Mr. Drinker: He does not know the opinion of the Supreme Court.

The Court: There is no use of referring to the Supreme Court, ask him a question.

Q. (By Mr. Drinker) Mr. Freeze, if you heard that someone said that these mines, operated in the most efficient possible manner, could not have produced more than 5,000 tons per week, would you say that was correct or incorrect?

2201 Mr. Warrum: Now, if the court please, the defendants renew their objection to this line of testimony, because the testimony as to the capacity of these mines, as sworn to by Mr. Bache and Mr. Denman on the former trial was before the Supreme Court,—

The Court: This is a trial de novo; let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. What would you say?
A. I would say they were mistaken.

Mr. Drinker: I hate to keep on so everlastingly on these matters, but I would appreciate it if I could in the next five minutes have him discuss very briefly the four additional considerations which go to make up open shop operations less expensive than union operations, so we will have a complete record.

The Court: If it is established as it is, what is the reason—

Mr. Drinker: No one in the United States has greater respect for the Supreme Court than I have, but with the testimony in the other case, which we thought was amply suffi-

cient, the court intimated there was only a saving of 17 cents a ton, and I want to fix it so nobody will have any doubt about it. I wish your Honor would let me do it.

The Court: Go ahead.

Q. (By Mr. Drinker) Mr. Freeze, is there any condition of open shop operation cheaper than union operation connected with the employment of unnecessary men? Now, be very brief, we only have four minutes.

2202 Mr. Warrum: Not so brief but what I will get my objection in the record. The defendants separately object to this testimony because it calls for a conclusion on the part of the witness, and is a conclusion as to matters which are not in issue in this case, because no possible answer can tend to throw any light on the issues in this case, and because the matter is concluded by the opinion of the Supreme Court.

The Court: You may answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. Yes, sir, you have to have more men in union mining than in non-union mining, in that it takes more men to handle the same amount of coal. I don't mean a greater number of employes daily than under union, but the same amount of day employees under union could handle more coal under non-union, from the fact that you work two men with the same overhead expense.

Q. But in a union mine is a man allowed to do more than one thing?

Mr. Warrum: Now, the defendants renew their objection, and for the further reason that the question is leading and suggestive.

The Court: You may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker: I will agree that any objection you may make can be considered, on any conceivable ground to all of these questions.

The Court: I said he might answer.

2203 A. Yes, sir, he is permitted to do other work besides his work.

Q. A union man? A. Yes, sir.

Q. Can a pump man dig coal?

A. No, sir, but he can do other day work.

Q. If a pump man does do work, does he get paid a pump man's wages or day wages?

A. A pump man's wages, provided the work he is doing is less,—he takes the higher rate.

Q. How about the possibility of rewarding efficient men?

Mr. Warrum: Defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. Well, under union prices today, men get the same price regardless of their efficiency, because the price is set at a convention in which the union labor gets the same, whether he is efficient or a poor man. Both may be driving a mule, and one is a better driver than the other, but they both get the same price. You bring the inferior man up, and the superior man down; strike a level, in other words.

Q. Is it necessary under union conditions to have a mine foreman who knows anything except coal mining, and if so, what?

A. He has to know the contract, and be able to administer the contract in settling labor troubles.

Q. What does the contract consist of?

A. Of a little book of about a dozen pages, and then
2204 all the decisions of the arbitrators since the contract was first made.

Q. In 1913,—will you indicate about how large a book those decisions consist of?

A. We had three books, big books, perhaps that big square (indicating) and about two inches thick, of decisions of the arbitrator.

Q. And in addition to knowing mining, that man—

The Court: Now, you are getting off the question.

Q. (continuing) Does the necessity of familiarizing himself, by the foreman, with all these conditions, and his time taken to discuss them and decide these disputes, affect the efficiency of the operation of the mines?

Mr. Warrum: The defendants renew their objection.

The Court: Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. Yes, sir.
Q. If so, in what way?
A. Because it takes the time of the foreman and superintendent, in other words, the management of the mine, a large part of the time to attend to the labor troubles that come up, both at the mine and at the company office, and also where the district trial case may be, and it takes them away from their work, and they are prevented, during those times, in managing the mine.
Q. Under union conditions, in your opinion, is it more important to have a foreman who knows these contracts, or a man who knows operation of a mine?
2205 A. It is more important, if either one is the most important, it would be more important to know the contract.
Q. I have one more question. Is there any condition relative to the establishment of friendly relationship between the mine management and the men, as between the union miners and the non-union miners? Very briefly, now.

Mr. Warrum: The defendants renew their objection because this is purely speculative, comparing the friendly relationship under union and non-union conditions.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

A. I think under unionism there is warfare of course between the management and the miners continuously about the condition of the mine, and pay for the different deficient work.
Q. Is that conducive to the establishment of friendly relationship?

Mr. Warrum: Now, if your Honor please,—

Mr. Drinker: I will admit any objection that you care to make to any of these questions.

The Court: You could hardly call warfare conducive to friendly relationships.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

The Court: You will announce a recess until 2 o'clock.

(Whereupon, a recess was taken until two o'clock p. m.)

After Recess. 2:00 o'clock P. M.

2206 The Court: Proceed with the trial.

T. A. FREEZE, recalled as a witness, having been previously sworn, testified further as follows:

Cross-Examination

By Mr. Warrum:

Q. You became mine foreman in 1902?

A. Yes, sir, I think that was the date. I wouldn't be positive whether it was 1 or 2. I think it was 2 I went to bossing.

Q. Were you a member of the miners union?

A. Yes, sir, for one year.

Q. What year was that? A. 1917.

Q. In 1917? A. 1917.

Q. What were you engaged in in 1917?

A. Digging coal.

Q. Whereabouts? A. Little 6, Midland.

Q. Little 6, Midland? A. Yes, sir.

Q. From 1902 on you were employed either as a foreman or operator, or otherwise employing mine labor?

A. Yes, sir.

Q. Up until the time you became mine inspector?

A. Yes, sir.

Q. And your service as mine inspector was in 1910, 1911 and 1912?

2207 A. Yes, sir.

Q. And next you were commissioner for the operators? A. Yes, sir.

Q. And one of your duties was to represent the operators and adjusting disputes? A. Yes, sir.

Q. Under contracts that had been made with the union miners? A. Yes, sir.

Q. Do you remember when the first contracts were made in 1902, between the representatives of the United Mine Workers in this field and the operators?

A. Yes, sir. I was operating at that time. We made a contract with them here at Ft. Smith.

Q. Before that time the operators had been operating under non-union conditions? A. Yes, sir.

Q. And these contracts that were made with the United Mine Workers simply provided that existing conditions should continue, is that right?

A. No. The first contract made didn't provide for that, as I remember it. There were later conditions in the contract, perhaps several years afterward.

Q. Don't you know the first contract between the United Mine Workers and operators stipulated that the conditions then existing in the mines, working conditions, should continue?

Mr. Drinker: I think the contract will speak for itself.

A. That might be true. I wouldn't deny it. I don't recall it.

2208 The Court: It is a matter of memory. Proceed.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. You say you were familiar with these Bache-Denman coal properties?

A. I was familiar as a man could be from inspecting them.

Q. You have seen them?

A. Yes, sir.

Q. In these coal seams, there was a parting, as they call it, of slate and stone? A. Yes, sir.

Q. Between the seams?

A. At some of the mines there was, yes, sir.

Q. That is true of the veins down there generally, isn't it?

A. Of large veins, yes, sir.

Q. And at the bottom there is the same sort of a stone substance that has to be removed?

A. I didn't catch that.

Q. That is true at the top and the bottom, and partings in the middle, is it not?

A. Different formations in the middle and top and bottom.

Q. At the top there is what they [—] bone coal?

A. Yes, sir.

Q. That is coal that the miners have to get out that cannot be marketed, is that right? A. That is true.

Q. And they remove that under their contract of em-
2209 ployment and are paid for it? A. Yes, sir.

Q. Do you remember what they are paid down there?

A. At the time I was bossing No. 4 they were paid 2 cents per inch.

Q. And in 1910 that was modified so as to be 10 cents for ten inches, is that right?

A. I believe that is right. I was not bossing at that time. I was mine inspector.

Q. That was one condition that was changed for the benefit of the operators?

A. Yes, sir, there had to be some relief.

Q. There was something said about working in water. There was water in these Bache-Denman mines, was there not? A. Some in most all of them.

Q. Some places six inches, some places a foot, some places three feet, is that right? A. Some places none.

Q. Some places none? A. Yes, sir.

Q. The Central Coal & Coke Company that your attention has been called to, had mines in the same drift and with the same coal deposit in the same neighborhood, is that right?

A. Yes, sir.

Q. They also had water? A. Yes, sir.

Q. The contract provided that they should pump the
2210 water out, and the miner worked then for a certain scale, with the water pumped out, is that right?

A. That is the contract, I think, with all of them, sir, that we should handle the water in the mine.

Q. Did you know that Mr. Bache, although requested to do so, concluded that he would rather pay the differential and let the men work in the water?

A. I didn't know that, no, sir.

Q. You spoke about the Hoffman mine, and its capacity or its potential capacity. Did you know the Hoffman mine hadn't been operated for some time?

A. I know the Hoffman mine wasn't being operated when I left there, but it was operated when I was at No. 4 Prairie Creek as foreman.

Q. What time was that? A. 1909.

Q. 1909? A. 1919.

Q. 1919? A. 1909.

Q. What time after that, if you know, did it cease operation?

A. I inspected it a number of times when I was mine inspector. I couldn't say definitely.

Q. You know it hadn't been operating for two or three years before 1914, don't you?

A. That might be so. I don't recall, sir.

Q. Who operated the Hoffman mine?
2211 A. The Hoffman boys.

Q. Who next?

A. I think perhaps the Central Coal & Coke Company succeeded them. I am not sure whether Bache ever operated it directly or not.

Q. The Dallas mine has been spoken of. Don't you know that it hadn't been operating and had been closed for some time?

A. It was not in operation at the time I was mine inspector.

Q. It was not in operation in 1910, 1911, 1912?

A. No, sir.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. You have spoken about these conditions. I wish you would very briefly explain what is meant by "conditions" in connection with a union contract?

A. I think I explained that before, but "conditions" means the condition that is in the mine, and in the making of a contract remains intact.

Q. It does not refer to the condition of the mine in the ordinary sense?

A. No, sir, it refers to other conditions

Q. It is a term of the contract that is written in, by having it established?

A. If we were taking up so much bottom, we had to continue taking up that much bottom; if we were turning rooms without any pay, we had to continue doing that; if we
2212 were getting paid for it, we continued getting paid.

Mr. Drinker: That is all.

Recross Examination

By Mr. Warrum:

Q. If two men were working in a room under non-union conditions they were continued?

A. Yes, sir.

Q. And if one man was working in a room under non-union conditions, that would be continued?

A. That would be my understanding of it.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. And the operators were not permitted to change that, although it reduced the efficiency?

A. They were not permitted to change it.

Mr. Drinker: That is all.

Recross Examination

By Mr. Warrum:

Q. At that time? A. No, sir.

Q. Every contract was negotiated between the operators and miners?

A. It could be changed every one or two or three years when they made contracts, but not in the meantime.

Q. If any dispute arose between the men under a contract, that was referred to you and some representative of
2213 the miners, and if you could not agree it had to be arbitrated? A. That is right.

Q. With reference to incompetent men, as you testified to this morning, don't you know that in all contracts you ever saw, it was provided that the operator should employ their own men, hire their own men? A. Yes, sir.

Q. Discharge their own men? A. Yes, sir.

Q. And if any grievance arose about discharging a man, that should be taken up by the grievance committee, and if you and the representative of the miners could not agree an arbitrator is appointed? A. That is right.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. I will have to ask one more question. If the miners were not satisfied with the arbitration, did they abide by it, or did they go on strike?

A. Ordinarily they abided by it. Sometimes there was a strike, but that was out of the ordinary.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

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EUGENE MCAULIFEE, recalled as a witness, having been previously sworn, testified further as follows:

2214 Direct Examination

By Mr. Drinker:

Q. Mr. McAulifee, you testified in answer to a question of mine that in case of a mine producing in 1914 in the Hartford Valley, 800 to 1000 tons per day, operating under a union scale, allowing only one man to work in a room, and with the other conditions then in effect under a union scale, and with an actual of cost of $1.75 per ton, that in your opinion that cost would have been reduced from 25 to 40 cents per ton

under open shop conditions. Now, in giving that opinion, did you contemplate any decreased cost due to increased output or production? A. I did not.

Mr. Warrum: The defendants renew the objection to this class of testimony, because it calls for a speculation on the part of the witness, and for the reasons heretofore given.

The Court: I will allow him to answer, but we must get along.

Mr. Drinker: We will get along.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

The Court: I don't want to intimate that anybody is killing time, but we are. Proceed.

Mr. Drinker: If your Honor please, it is awfully difficult to try this case if I feel that the most important thing is to get done. I think I should be able to feel that the most important thing is to try it right, and I am giving deep consideration to the preparation of the case. I am not trying to take up time.

The Court: Proceed.

2215 Q. Did you answer the question?

A. I answered that I did not.

Q. Taking into consideration the factor of increased output, as well as the other matters considered by you in your previous answer, what in your opinion would be the total saving by open shop operation, under the other conditions?

Mr. Warrum: The defendants renew their objection.

The Court: I will allow him to answer. Answer the question.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. From 50 to 80 cents per ton, depending on the mine and physical conditions.

Q. In giving your opinion this morning and just now, did you contemplate any general reduction in wages?

A. No, sir. I am not sympathetic with low wages.

Q. In your opinion, would a general reduction in wages in the Sebastian County field, in 1914, have resulted in a reduced cost?

Mr. Warrum: The defendants renew their objection to that.

The Court: I will allow him to answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. No. In the control of mine property, the adjusting of wages, increasing for the more skilled men and reducing correspondingly to the less skilled, would be advantageous, but in the matter of a general reduction, no.

Mr. Drinker: That is all.

2216 The Court: Any cross-examination?

Mr. Warrum: I don't think any of his answers were responsive to the questions, so I waive cross-examination.

The Court: Stand down.

(Witness excused.)

Mr. Drinker: If your Honor please, in this stipulation putting these witnesses in there were six witnesses omitted. They are here, and I am under this difficulty.

The Court: Suppose you stipulate them in.

Mr. Drinker: I will call them and offer their testimony, but if the other side will not agree that they shall go in, I will have to go ahead and examine the witnesses. I want to get this record the same as the one that is before the Supreme Court, plus the rest of it.

Mr. Warrum: We have agreed to at least 85 per cent. of those they asked us to. I think it is an extraordinary agreement for us to make. We are interested in this. We have done everything we could.

The Court: Very well. Proceed.

Mr. Drinker: I am not going to get caught with the idea that this is not the same record.

The Court: Bring on your witnesses.

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S. P. Epperson, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. What is your name?

2217 A. S. P. Epperson.

Mr. Drinker: I suggest that the testimony of this witness, given on the former trial be considered as taken here and read into the record without taking the time to bring it out.

Mr. Warrum: We object, if the court please.

Mr. Drinker: We will examine the witness.

Q. What is your business?

A. Farming and mining a little?

Q. Were you employed by the Bache-Denman Company in 1914? A. Yes, sir.

Q. In what capacity? What were you employed to do?

A. I were a guard.

Q. You were a guard? A. Yes, sir.

Q. When did you start to work for the company?

A. I don't remember just when that was now. I don't remember what year it was.

Q. Were you there when they had all that trouble?

A. Oh, yes, yes, yes.

Q. If that was in 1914, were you employed at that time?

A. Yes, sir.

Q. Were you there at the mine when the property was destroyed on the day of the big battle, July 17th?

A. Yes, sir.

Q. Will you describe what happened on that day?

A. It has been a good while ago, but I will do the best I can.

Q. Give us your present recollection of what happened?

2218 A. Well, on the evening before, or the night before, a little after night, after I had went to my tent, the lights went out, sometime along the fore part of the night, the best I can remember. The night man come to my tent and called me to come out and stay with him, and I did. Just about the break of day, or something like that, there was a bunch of men coming along, I would judge 16, four abreast, something like that, the best I can remember, and I would say something like 12 or 15 feet back there was three or four abreast again. It seemed to me all of them had guns. Those three or four, whichever it was, passed me a little bit, and then they whirled and shot at me, all of them. It looked like just as fast as they could.

Q. How many times did they shoot at you? How many shots were fired?

A. There were three or four, I couldn't say which.

Q. Did they hit you? A. No, sir.

Q. Did they come close to you?

A. It seemed like they did. It seemed like it almost hit the hair on my head.

Q. Go on.

A. Before that, just as they were passing by, that guard called me out, he said, "You stay here and I will go down and report this", he says. I told him "All right," and he went on down and reported it. After they passed by me a litle ways, I don't know just how far. They hadn't been gone very long until there was a lot of shooting taken place.

2219 Q. How far from the Huntington road were you when you were out there? A. At that time?

Q. Yes.

A. Right at the road, right close to it. I couldn't say how many feet, but close.

Q. Were you out on the road or on the company property?

A. On the company property.

Q. When you were guarding were you guarding on the company property? A. Yes, sir.

Q. And you were right at the gate to the property?

A. I wasn't at night. That wasn't my regular post.

Q. Where was your regular post? A. At the fan house.

Q. The fan house? A. Yes, sir.

Q. What time in the morning was it these men shot at you?

A. I would say something like the break of day, something near that time.

Q. What was the next thing that happened on that same day? Go on and describe what happened later on?

A. As I said, after they passed on down the shooting taken place. It wasn't but a little while afterwards until the man that went down to report that, that wanted me to guard while he was gone, he came back and relieved me, and I went down to get my breakfast. After that I went over to the fan house, my regular place.

2220 Q. What happened after you got to the fan house?

A. When I walked up there I seed two guns sitting there by a tree, leaning up against a tree, and some ammunition setting there. I picked those guns up, and I says to myself—something I don't just remember—anyhow, there were some guns there and I was there alone and I seed a fellow by the name of Andy, and I seen a fellow named Andy Merry coming down there.

Q. Who was Andy Merry?

A. He was a man, if I am not mistaken, I believe he fired the boilers, I think, if I am not mistaken.

Q. Go on and describe what took place?

A. I turned around and said: "Andy, here are these night men's guns." I said, "You take one of these guns." I couldn't handle all of them anyway. I said, "Let's go back over to the shaft." He said, "No, let us wait a while." About that time I seed the smoke begin to rise over the hill. There was a hill there, the best I can remember, right above the fan house.

Q. Back of the fan house?

A. Yes, sir. I seed the smoke begin to boil and I said, "Now, Andy, let's get away from here." He said, "All right", and we started out and come on over to the shaft.

Q. Where was that smoke from? Was it from a row of houses back there?

A. Yes, sir, a row of houses upon the hill.

Q. Were there any shooting going on at this time?

A. Yes, sir.

Q. Whose guns were those you found by the fan house?

2221 A. I suppose it was the night man. There was none there. There was supposed to be two there, but there were none there when I got there.

Q. The guards were not at their post when you got there?

A. Yes, sir.

Q. Do you recall anything about anybody concealing themselves in the boiler? A. No, sir, I don't.

Q. Do you remember anybody hiding in the boiler during that shooting? A. No, sir.

Q. To refresh your memory, I will refer to that part of your testimony in the former trial, as follows:

"I would go down to the boiler and there some women and children in the boiler and I would go back there to see if any of them were hurt. I was afraid some of them would get killed."

Do you recall that?

A. I might have misunderstood you about that.

Q. Just describe that?

A. Yes, sir. During the fighting there were some women and some children, if I am not badly mistaken, down in there. I did very often go backward and forward, to see if any of them was hurt or not. I was afraid some of them would get killed, I very often went backward and forward to see about them and then I would go back out around the trees that stood

around close to the boiler there. I went backward and forward several times.

Q. Do you now recall the people hiding in there?

2222 A. Those women?

Q. In the boiler? A. Yes, sir, the boiler?

Q. Yes.

A. Yes, sir, there were some women and children in there.

Q. What time did you leave the mine?

A. I couldn't say exactly. It was close on to twelve. It seems to me like it was somewhere between half past eleven and twelve.

Q. How many did you leave there?

A. I believe Mr. Moore was one.

Q. Buster Moore?

A. Yes, sir. Bud Eustis. There was a fellow named Shell. I believe he used to be a deputy marshal, and maybe he was a deputy marshal then.

Q. Where did you go?

A. We started out to Ft. Smith. We got separated some way or other. Part of them went off one way, and there was nine of us, I believe, as well as I remember it, we footed it through.

Q. Where did you finally go?

A. We come on right down and got in here to South Ft. Smith.

Q. Here at Ft. Smith?

A. Yes, sir. And caught the street car there.

Mr. Lucas: You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. There were about twenty-five or thirty down there with you were there not?

2223 A. When we first started there was. I didn't count them, I suppose there was.

Q. How long had you been guarding at that place?

A. I couldn't tell you exactly how long; ever since they opened up there and John Shaleen taken charge.

Q. From the time they opened up? A. Yes, sir.

Q. About how many guns did they have up there? Did they have a hundred guns?

A. No, sir, I don't think so.

Q. Did they have seventy-five?

A. I don't think so. I never did count them, but I don't think there was that many.

Q. The guards were a pretty rough class, were they not?

A. It didn't seem so to me.
Q. Did you see any of them drinking?
A. I wouldn't be positive. It seems to me like I did.
Q. You saw them drinking often, did you not?
A. I wouldn't say I did.
Q. There was a good deal of liquor in the [came], was there not?
A. I want you to excuse me a little bit. My place was out on guard, all through the day. I wasn't around there through the day.
Q. You would come back at night? A. Yes, sir.
Q. The guards had liquor there when you came back?
A. I didn't notice it if they did.
2224 Q. Did they gamble a good deal?
A. I don't know. They might have done that. I am a man that don't gamble myself, or fool around places like that.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Lucas:
Q. Had you ever been a professional guard at any place?
A. No, sir.
Q. What was your occupation before you went to guarding that property? A. Farming.
Q. Did you go over and shoot up Frogtown while you were guarding? A. No, sir.

Mr. Lucas: That is all.

Recross Examination

By Mr. Warrum:
Q. Do you remember when Frogtown was shot up?
A. I remember about the time they said it was.
Q. The boys at the camp were laughing about the shooting of Frogtown, were they not?
A. I don't think they was. I never heard anything about it.
Q. You never heard anything of that kind, them laughing and talking about Frogtown? A. No, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

2225 I. L. COLE, called as a witness in behalf of the plaintiffs having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Give your name to the reporter? A. I. L. Cole.
Q. Did you testify in the former trial of this case?
A. Yes, sir.

(Witness Excused.)

Mr. Lucas: We offer the testimony of this witness as it appears in the previous record, page 1750 to 1752.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence had no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. State your name. A. I. L. Cole.
Q. Where do you live, Mr. Cole?
A. At Avant, Oklahoma.
Q. Where were you living in 1914?
A. In Hartford from March until September, 1914.
Q. In Hartford, Arkansas? A. Yes, sir.
Q. What business were you in there?
A. Watch repairing, in a jewelry shop.

2226 Q. Keep your voice up, Mr. Cole, were you in the jewelry business? A. Yes.

Q. Do you remember the day of the so-called riot April 6th, 1914? A. Yes, sir.

Q. Who, if anyone came to your store the morning of that day and asked you to close your shop?
A. Jim McNamara.
Q. Do you know who he was and where he worked?
A. Yes, sir, he worked at one of the mines, but I don't know what mine.
Q. You knew him, did you? A. Yes.
Q. What did he say?

A. That all of the rest of the stores were going to close up and he wanted me to close up and march out there with him.

Q. Did you march? A. Yes.

Q. You went out to the school house? A. Yes, sir.

Q. Did you hear any speeches made out there?

A. Well, I know who made them but I didn't hear of them, I was not close enough to hear any of them.

Q. Who made the speeches?

A. There was some lady named Hogan, or something like that and Jim Slankard talked a little.

2227 Q. How many people were there at the school house?

A. I guess about twelve or fifteen hundred.

Q. Did you go down to the mines when the crowd went down? A. Yes, sir.

Q. Did you see some trouble there at the ropes between one of the guards and the crowd?

A. I saw part of it.

Q. Did you see the big guard Barnes hit over the head?

A. Yes, sir.

Q. Did you see him hit? A. Yes.

Q. Who? A. Sandy Robinson.

Q. Was Barnes pointing his guin at anyone or did he point his gun at anyone that you saw?

A. No, not that I seen.

Q. Did you see a banner put on the tipple?

A. I don't remember whether I seen it put on or not.

Q. Did you see it after it was on? A. Yes.

Q. What did the banner say?

A. Something about it was a union man's country.

Q. Do you remember the occasion of seeing a man by the name of W. H. Argo beaten up in Hartford by Jim McNamara? A. Yes, sir.

Q. Where was it?

A. In front of that restaurant, just as we came out of

2228 the restaurant.

Q. Burson's restaurant? A. Yes.

Q. State what you saw there?

A. I was standing across the street when he came out and I seen him hit this Argo and by the time I got over there Argo was down on the sidewalk next to the building.

Q. Now, coming down to July 17th, 1914, the day of the battle out at Prairie Creek, state whether or not you were in Hartford the night before that battle. A. Yes.

Q. Did you see Jim McNamara on the street that night?

A. Yes, sir.

Q. State what you saw in that connection.

A. He was in a picture show for a while and then came out and down to the hardware store.

Q. Was that Smoots Hardware Store?

A. It is right next to Harris'.

Q. Is that the Hartford hardware store?

A. I don't know. It is on the same side of the street, the hotel is a couple of doors above there.

Q. State what you saw at the hardware store.

A. I seen Jim and Conroy—

Q. Who is Conroy?

A. Mayor of Hartford, and they were keeping track of the ammunition they took out of there.

Q. McNamara and Conroy?

2229 A. Yes.

Q. Who was taking the ammunition?

A. I don't know.

Q. Were men going in and out?

A. Yes, sir.

Q. And taking ammunition?

A. Yes, sir.

Q. On the morning of the battle did you go out to No. 4?

A. Yes, sir.

Q. How far did you go?

A. Well, I don't know just how close it was. It was as close as I wanted to go.

Q. Did you go right to where the shooting was going on?

A. I guess I was about 300 yards from there.

Q. Do you know whether you got as far as Prairie Creek —do you know where Prairie Creek village was? A. Yes.

Q. Did you get into Prairie Creek village?

A. Well, I was right on the edge of it. I don't think I was right in it.

Q. Did you see Jim McNamara that morning?

A. I saw him about 11:00 o'clock, I guess it was.

Q. Where was he?

A. He was coming back with a gun.

Q. He was coming back from where?

A. He was back in where the rest of them was shooting and he came back down to where a dozen or two of the

2230 men were sitting.

Q. He came back to where you were watching the fight? A. Yes, sir."

(Witness excused.)

JOHN T. ALLISON, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Just give your name to the reporter.
A. John T. Allison.
Q. Did you testify at the previous trial of this case?
A. Yes, sir.

(Witness excused.)

Mr. Lucas: We offer the testimony of Mr. Allison, as it appears in the previous record at pages 1253 to 1260, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Direct Examination

By Mr. Hull:

2231 Q. What is your name?
A. John Thomas Allison.
Q. Where do you live, Mr Allison?
A. A mile northeast of Clarksville, Arkansas.
Q. Please talk up, Mr. Allison. You are used to commanding men in the mines, and I want you to talk so that everyone can hear you. Where did you say you lived?
A. A mile northeast of Clarksville.
Q. How long have you worked there?
A. I am not working there; I am living there.
Q. Where are you working?
A. For the Fern Wood Mining Company No. 2, located at Montana, No. 2 mine.
Q. How long have you lived in that part of the country?
A. About five years.

Q. Where did you live before that?
A. At Tulsa, Oklahoma.
Q. Were you born there?
A. No, sir.
Q. Where were you born?
A. In the County of Durham, England, across the Atlantic.
Q. In the spring of 1914, in the month of June, did you go to work for the Bache-Denman Coal Company?
A. Yes.
Q. Do you remember the date?
A. No, sir, I can't tell the date I went up there.
[A.] Was it during the first of June?
2232 A. Yes, sir, sometime in June. It was pretty nice weather to work when I went up there.
Q. What were you engaged to do?
A. I was engaged to do machine work at that time.
Q. Do you remember the time you went down there for the first time?
A. Yes, sir, I went on the ten minutes after 4:00 train.
Q. You went on the 4:10 train?
A. Yes, it starts ten minutes past four in the evening.
Q. From Fort Smith?
A. Yes, from Fort Smith.
Q. Will you state to the court and jury what occurred on that train?
A. Well, we got on the train and nothing happened, for a while, and I don't know exactly where it was, but the first thing was said, some of the boys said, 'Is that the conductor?' And the conductor turned around and said, 'Yes, and no God damned scab either.' And the boys laughed about it. On the ride I noticed a gentleman come through the train—he passed through the train once or twice and looked suspicious at us and when we got to Greenwood he came in with two or three gentlemen—he brought two gentlemen on and he said 'That is the one with the blue suit on'. And he pointed to me.
Q. Did you know who he was?
A. When I testified before I identified him on the stand and the name was Irvin or Irwin, or something like that, I think. He was said to be a justice of the peace of Greenwood.
2233 Q. What did he say?
A. He said, 'That is the one with the blue coat on'. And I looked around to see if there was anybody with a blue coat on, and I didn't see anybody and he said, 'That is the son-of-a-bitch over there, he has got a gun', and he came over

and said, 'We will have to search you', and I said, 'No, you won't search me', and he said, 'The son-of-a-bitch, he has got a gun, I seen him with it'. And I said, 'No, damn you, you never saw me before', and someone else said, 'You better search him, there is a mob there'.

Q. Did he search you?

A. Yes, they both searched me.

Q. Did they find a gun on you?

A. No, sir, they didn't find any gun on me. He said, 'This is the son-of-a-bitch, I saw a gun on him', and I said, 'I haven't got any gun on me, you never saw any gun on me. You don't know who I am'. And he said, 'You will never get to Prairie Creek.' And I said, 'I am going there', [—] We will put the son-of-a-bitch off.'

Q. When you got to Midland, what did you do?

A. Before we got to Midland they stopped the train, I don't know whether they threw it off the track or not, but they put the brakes on, and it threw us out of the seats. There were a lot of them there, and they said, 'Come look at the scabs on exhibition', and they promenaded around the coach. We got into the Midland depot with a big mob outside and Slankard got on the train

2234 Q. Who was Slankard?

A. A constable down there at that time; and he got on the train and he and another fellow got in the coach and were promenading up and down on the train and when we got between Midland and Prairie Creek Slankard said, 'We will search you', and I said, 'I haven't been searched yet,' and I said, 'Where is your authority?' And he showed me a hog-leg that long (indicating) and I said, 'You have got the advantage of me, go ahead and search me', and he searched me.

So Pete Epperson was with me and I said, 'Which way, Pete, do you get off of the train?' And he said, 'On the left hand side.' And I asked him. 'Which way is the mine located?' And he told me and I said, 'I am going to throw off his valise, I am not going to put up with any more of this.' And we got off and nothing more was done with us. And there was some boys that they paid their transportation back, I learned afterwards.

When we got past the last shaft someone got me, a rock hit me between the shoulders with pretty good force and made me draw back. I could not see anyone, but a lot of women was sitting on a porch, and I smiled it off all right.

Q. And now going down to the mine with Charley Cheek and Coons and Ogelby, do you remember anything that occurred on that train?

A. Yes, there was only four of the boys on that train. It took us five hours to go about 20 miles the day before. We were on the train, and there was Blue Johnson and Charley Robertson and the Meek boys, four of them

Q. Do you know the Meek boys' first names?

2235 A. No, sir.

Q. Do you know where they work? A. No, sir.

Q. Do you know where Blue Johnson worked?

A. No, sir, I don't suppose any of them were working at that time. They had been drinking a little and this Blue Johnson was a little intoxicated, and he pulled out a pint of whiskey out of his bosom or pocket, and he took hold of it by the neck and said, 'I am going to get a God damned scab with this', and the boy with him tried to get him back into the other coach, and he would not go, and he picked up a [spittood] and said, 'I am going to get a God damned scaly with this', and I said to the other boys, 'Keep your eyes open, there is going to be something doing. And he came with the spittoon and made a pass with it, and I caught hold of his shoulder and said, 'What are you going to do with that?' 'I am going to get a God damned scaly.' And I said to him, 'You put that down or I will kick you out of the window', and then he put it down and went back to his seat. And then the conductor came in and he said, 'What is the matter?' And I said, 'Why, we paid our fare and we want peace', and the conductor taken him out into another car.

Q. Do you remember the time preceding that when you were at Fort Smith, at the time of the injunction suit?

A. Yes, sir.

Q. Did you one day, while you were down at that trial have some trouble on the streets of Fort Smith?

A. Yes, sir. Harry DeMoss and I were walking

2236 around here together one day, and we looked down the street and saw Sandy Robinson and the Wallace boys and some others came along and Sandy made the remark when we passed, 'There goes [to] scalies', and I didn't say anything. And we came back and he said, 'There goes two scalies' again, and I said, 'Yes, two damned good ones, too.' And again we passed and they said 'There goes two scalies' again, and I stopped and patted him on the back and I said, 'Sandy, someone is going to knock hell out of you', and he said, 'You can't do it' and he said, 'I will go down to the river at any time with you', and I said, 'I know where I am, I am in Fort Smith', and I said, 'I am an old man, but I will fight you for

any money you want to put up, and if I can't knock you out in the second round I will never put them on again', and that stopped his bluff that day, and he never said anything more.

Q. Coming down to the battle of July 17th, were you employed by Mine No. 4?

A. Yes, I was foreman at that time in the mine.

Q. State all that occurred on the day, in your own words.

A. Well, the night before the battle, that was the first beginning of it, they must have short circuited the wires, because they took the power from us, and everything was put in darkness, and the boys thought they were coming in the night, and they all got up and got their clothes on, and got out, myself included, and there was nothing doing. And we went back to bed and about 4:00 o'clock the next morning as near as I remember some shooting took place and we had to get out again.

Q. Do you know where that shooting come from?

2237 A. No, sir, I was in bed when it came, and I never took any notice of it. I didn't get up until the boys said they were coming, I laid awhile because they had been shooting before. But the boys said they were coming and I had to get up then and I got up and put my clothes on. But there was no more trouble at all then.

About 8:00 o'clock Bud Eustis was up and he said, 'Tom, I want to send some man down to get fresh water'—and I said, 'I won't do it, I won't run the mine until you put a fan in, I won't run the mine because it is against the law', and he said, 'You can fix the bell' and I said, 'Yes', and I put Brown and another man down there. They didn't have any connection signal and I put Dallas at the head, and they just got to the bottom when the shooting began, and we took them out and no work was done. And the shooting began, and the bombardment continued until 10:00 o'clock and then it subdued a little, and then it started in worse at 11:00 o'clock, and we got rid of them, we left at 11:30. In the meantime they set fire to the place roundabout, and they gathered around the fan house on No. 4 slope, and that is the last place they set fire to. At 11:30 we left, as near as I can remember. We went out through a thicket and cut across the creek and switched around the back side of Midland and hit the road for Hackett.

Q. Describe the shooting, how many shots were fired?

A. Oh, Good God, I cant' tell, more than I would like to be amongst again. They were shooting all right, there is no mistake about that.

2238 Q. Where was the shooting from?

A. In the first place, it came from toward the track, where the school house is. They were in behind the cars. There was a dump out there about so high (indicating) where they had been loading cars, where they didn't have no track, but they were behind the cars and the only way they could get the bullets through was between the cars. The bullets were coming between the trees, and spent bullets were dropping down as if they didn't have power to carry them over, and some went buzz through the trees, I guess they were 30-30 by the sound of them. And they got around more towards the east side I guess. There is a ravine that runs down behind the boiler house, and finally we left.

Q. After you left the mine did you look back and see any fires in No. 4?

A. Yes, I presume a little over a mile out, we were on a piece of high ground from the other side of the creek, and we stopped at that time, and I said, 'We ought to stop and see if everybody is here, everybody ought to look and see if we are all here, and who is here;' and everybody was there with the exception of two boys, I think, but we didn't know which way they had gone, but they knew the territory well.

Q. Who were they?

A. Pat Malloy was one, and the boy who was electrician there, I forget his name right now.

Q. Was it Harmon?

A. Harmon was there, and the Parrish boy was there;

2239 they were walking with us, and we got out on a high knoll and looked back and I said, 'There she goes, No. 4 is going to'. 'They have got the whole cheese.' And we went on for two miles and every house was vacated and no one was around there. We got out on the main road and kept going on the road and trying to find someone who would let us have a car, and finally we got to a union man's house, and he would not let us telephone for quite a while, but he finally did. We came back on the road, and walked down the road and Doc King came along and we had some guns we got down there, and we gave them to Doc King. One of the boys knew him and we gave the guns to Doc King. And he had a little picnic ham and he gave it to us, and we built a fire. We were hungry, and he gave us that picnic ham and a few loaves of bread, and we had a lunch. And Bill Waddell and I were coming, and we got to the depot, and there were about three

people around there. One fellow was drunk and he came to me and he said, 'How is Prairie Creek', and I said, 'Where is Prairie Creek? I don't know where it is. What is wrong there?' And he said, 'Uh, huh' and about fifty of them came out of the brush, and one of them came up to Bill Waddell and said, 'Were you at Prairie Creek?' And Bill said, 'Yes.' He said to Bill, 'You didn't stay to see the fight' and Bill said, 'No.' And he said, 'Where did you come from?' And he said, 'From Kansas City, I was a meat cutter up there'. And he said to Bill, 'You wanted a job and you came down here and you learned a lesson, didn't you', and he said, 'Yes.' And then he said to me, 'Where did you come from?' And I said, 'I came with this gentleman', in order to save
2240 a whipping. And he said, 'Where were you at before this', and I told him, 'Tulsa, Oklahoma', and he said, 'What were you doing there? And I said, 'Truck farming' and I said I got burned out. That was another lie; I admit telling that one. And he said, 'Did you leave this morning before the shooting took place', and I said, 'Yes, sir.' That is the way we got out of it by telling a lie. We got on the train there and got into Fort Smith late that night.

Q. You had given your guns to Dr. King before that?

A. Yes, sir.

Q. How far is Hackett City from Mine No. 4? [—]

Q. How long did it take you to walk it?

A. Good God, we left there at half past 11:00 and we walked over the road, and it was after dark when we got there. There was a thunder storm and we got wet.

Cross-Examination

By Mr. Grant:

Q. Mr. Allison, where was your pistol at the time those boys wanted you to be searched?

A. I never carried a pistol in my life but once and that was in Oklahoma.

Q. You didn't have one in your grip?

A. No, my grip was there if they wanted to search it.

Q. Where did you get your gun that you gave to Dr. King?

A. At 10:00 o'clock that morning there was a fellow came out of a shaft with two and I said, 'Are you going to use both of them' and he said, no, and I said, 'Good God, give
2241 one of them to me' and I said, "How many shells have you got', and he said, six, and I says, 'You give me some shells and they will stay there until I need them.'

Q. Who came out of the shaft? A. Thomas.
Q. He was one of the employes of the Bache-Denman Coal Company? A. Yes, or he would not be around there.
Q. Were those the only two guns you saw there that day among the Bache-Denman employes? A. No.
Q. How many did you see there?
A. I could not tell you.
Q. About how many?
A. Oh, I can't tell you. There was a lot there that didn't have guns.
Q. Where were you the night Frogtown was shot up?
A. I never knew Frogtown was shot up.
Q. You never heard of it?
A. I heard of it, but I didn't know that it was true.
Q. Were you in town the day it was reported to be shot up?
A. I don't know when it was claimed to have been shot up. There was always shooting over there when they got drunk over there.
Q. When did you hear of it?
A. When the boys were accused of shooting it up.
Q. Before you left Prairie Creek after the battle you heard of it didn't you?
A. I won't say whether I did or not, because I never
2242 expected to be brought into this and I never set no dates down. I could not swear to anything."

(Witness Excused.)

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JOHN S. SHALEEN, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:
Q. Just give your name to the reporter?
A. John S. Shaleen.
Q. Mr. Shaleen, did you testify at the previous trial of this case? A. Yes, sir.

Mr. Lucas: We offer the testimony of John S. Shaleen, as it appears in the record of the former trial, at pages 1779 to 1785, inclusive.

Mr. Warrum: The defendants waive any objection to the reading of the deposition or statement from the former record on the ground that the witness is living within the jurisdiction of the court; but the defendants separately object to

the introduction in evidence of any of this testimony and extracts from the former record of the witness named for the reason that under the ruling of the Supreme Court the evidence has no probative effect, is incompetent and immaterial, and will not throw any light on the contention of plaintiffs on any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

2243 "Direct Examination

By Mr. Hull:

Q. What is your full name? A. John S. Shaleen.

Q. Were you working for the Bache-Denman Company in the spring and summer and fall of 1914? A. Yes, sir.

Q. When did you go to work for them?

A. About April 15th.

Q. What was your position for that company?

A. Foreman.

Q. Foreman at No. 4? A. Yes, sir.

Q. Prairie Creek, No. 4? A. Yes, sir.

Q. Do you remember the occasion of your being served with a subpoena to go to Hartford to attend a hearing before the Labor Commissioner Cleary in connection with these troubles? A. Yes, sir.

Q. Do you remember the date of that?

A. No, sir. I don't, it was about the 1st of May, I believe.

Q. State what occurred on that day?

A. Well, John Davis came over and represented himself as a deputy sheriff, and told me that he had a subpoena for a whole bunch to go over to that hearing of Cleary's at Hartford, and I told him that I would have to go to the office and call up and get orders from Mr. Cameron before I

2244 went, and he said, there is no use going over there because you can't get him, but I went, anyway, and after I tried to get Mr. Cameron over the phone and couldn't get him, I went out and he read his subpoena to the men around there.

Q. Did you finally communicate with Mr. Cameron in Ft. Smith? A. Yes, sir.

Q. What did Cameron order you to do?

A. He told us to come into Ft. Smith as quick as we could.

Q. Did you discuss with Davis the matter of going over to Hartford? A. Yes, sir.

Q. What did you tell John Davis?

A. I asked him if we could leave part of the bunch there to protect the property, and he said, 'No', and we all had to come at one time.

Q. What did you do then?

A. Well, I asked him, 'Now, what kind of protection are we going to protect', or whether we had to protect ourselves, and he said, 'I will protect you'; and I said, 'Well, I don't suppose the men will go there with your promise of protection', and I said, 'We will take our guns and protect ourselves', and he said, 'No, don't take any guns over there at all, leave them right here'. And he went and after he left I took the matter up with the men around there, and asked if they wanted to go over, and they said they would not go over there at all, and in the meantime I got Mr. Cameron and he gave me orders to draw the fires, and come to Ft. Smith at once.

2245 Q. How did you get to Ft. Smith?

A. By Walking over to Mena Junction, Oklahoma.

Q. How far is that?

A. Really I can't say, but about 20 miles.

Q. How many men were there with you when you made that trip? A. 28.

Q. Do you remember how soon it was before you went back with the men again?

A. I think he went back on the 11th of May.

Q. Referring to the trouble that night on the train, on June 15th, when some of our employes, or some of the employes of the Bache-Denman Company had some trouble in getting off of the train at the crossing, the details of that has been gone over so many times I will not ask you to give it in detail, but I will just ask you if you were there?

A. Yes, sir.

Q. And ask you whom you saw that you recognized among the union miners in that trouble?

A. Just John Menick and Sandy Robinson.

Q. You were not at the mine on July 17th?

A. No, sir.

Q. Where had you gone that day?

A. Ft. Smith.

Q. When did you go back to the mine after July 17th?

A. Sometime in October, I think around the 27th or 28th, I couldn't be sure just when it was, except in October, the latter part.

2246 Q. With whom did you go?

A. Mr. Coal and Mr. Atkinson, deputy marshal.

Q. And how many employes went with you?

A. Six or seven, I don't remember just how many went in the wagon with us that night.

Q. State where you spent the night of October 28th?

A. Back in a pit boss shack at No. 4 mine.

Q. On the afternoon of that day did you receive some warning that something was going to happen that night?

A. Yes, sir.

Q. Who gave you that warning?

A. Mr. Weston.

Q. Max Weston? A. Yes, sir.

Q. Did you, as the result of that warning, prepare, as well as you could, to defend yourselves in the house that you were staying in? A. Yes, sir.

Q. What did you do?

A. We had some steel plates brought up to the house and put around the walls, especially at the windows.

Q. State what occurred during the evening or night of October 28th?

A. We had all retired and about twelve o'clock, at midnight the shooting commenced and we got out there to see where,—to see if we could see anybody, but we could not, and we saw several flashes of rifles around there, and so we
2247 packed our ammunition that we had in a case and put in one of the grips to carry it that way with us, and the biggest part of the men, about 15 or 16 were out in the woods, they were afraid to stay in the house at night, they thought they would be safer than in the house, and the rest of us, about six or seven remained in the house; but we got right up and left after getting our ammunition in the grip.

Q. How many deputy marshalls were there with you?

A. Two.

Q. Had there been a third one there during the day?

A. Yes, sir.

Q. About when did he leave you?

A. About 5.30 or 6.00.

Q. Did he tell you why he left?

A. He said he was not going to stay there?

Q. What was this name?

A. Sid Johnson.

Q. After you had left the house where you were staying, did you look and see some fire?

A. Yes, sir.

Q. What houses, if you know, were being burned?

A. We judged No. 3 camp, and the house that we were staying in.

Q. What did you do getting away from there, where did you go?

A. What went up past Midland, over toward Montreal, and got out in the woods along the railroad right of way, and built a fire and stayed there until morning, and then walked to Hackett and then on into Ft. Smith.

2248 Q. How far is Hackett?

A. I could not say, 12 or 14 miles.

Q. Did you go back again in November?

A. Yes, sir.

Q. You were then operating the mines under the order of the court? A. Yes, sir.

Q. The receiver had been ordered to operate the mines?

A. Yes, sir.

Q. State when, if you know, the soldiers came?

A. They came there before we went out, I don't remember the day they came; a short time before we went.

Q. About what day did you go down there?

A. Well, I don't remember; I think in the early part of November, though.

Q. Was it soon after the troops got here?

A. Yes, sir.

Q. State the details of someone coming to the mine while you were foreman there, after you went there, after the troops arrived, with reference to the men working on the roads?

A. There was a man that represented himself as a road overseer, and said he wanted the names of all our men that were working there.

Q. Was anyone with him?

A. John Menick.

Q. What did he say to you?

A. He said he wanted the names of all the men working there, and I told him that I couldn't give them to him,

2249 but that we would send over the money for every man that we had there, as we did the summer before.

Q. Did you have an difficulty, Mr. Shaleen, in buying goods and supplies in Midland?

A. Yes, sir.

Q. When the soldiers were there, how did you get to buy supplies?

A. There was only two places in Midland that we could buy anything, and finally the second one of them shut down on us.

Q. Who were those places?

A. Bud Tharel and Seaman's.

Q. Did you have any experience in Seaman's store?

A. Yes, sir, I went in there one morning to buy some towels, and the clerk said he would rather not sell them to us, he said 'You know how these people are around here'—

Q. You need not state what he said. Were you successful in buying the towels at Seaman's store?

A. No, sir.

Q. Going back for a minute to a few days prior to the battle, do you know when the deputy marshals were withdrawn from the property under the old marshal?

A. I think the 15th of July, I believe it was.

Q. There had been three up to that time?

A. Yes, sir.

Q. Was the withdrawal of those marshals generally talked about and published, do you know whether it was published in the papers? A. I don't know.

2250 Q. Was it commented upon, that you know of?

A. Among our men it was, yes, sir.

Cross-Examination

By Mr. Covington:

Q. How many mines were you operating over there at that time?

A. He was operating some pigeon holes, and a part of the time a mine No. 7, Griffin's.

Q. Where was the pigeon hole with reference to what is known as No. 4 shaft?

A. I don't know just the direction that they was from No. 4, but one was know as the Griffin mine, up near ruble slope, and the other up on the creek going toward Huntington.

Q. How many men did he use at each place?

A. I don't know that; I don't remember.

Q. About how many?

A. I couldn't say.

Q. Five or six?

A. We had probably more than that at each place. There was not over ten I don't think at each place, except Hoffman's mine.

Redirect Examination

By Mr. Hull:

Q. Just one more question: Do you remember the occasion or were you present when a man, a union miner named Johnson started to get into some trouble with some of the employes, and United States marshal Morgan was there and quieted them? Were you present at that time?

A. No, sir."

(Witness excused.)

Mr. Lucas: We will offer the others at a later date.

Mr. Drinker: Do you want us to bring them in here?

The Court: Give counsel a list, and let them examine it.

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FRANKLIN BACHE, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Just give your name to the reporter.

A. Franklin Bache.

Mr. Drinker: May I be permitted to examine him on all subjects except damages, and call him back on that later?

The Court: Yes, sir, but why not, while he is here, examine him on all matters?

Mr. Drinker: I want to cover damages all at once.

The Court: Proceed.

By Mr. Drinker:

Q. Mr. Bache, just briefly go over your experience in the coal business.

A. The first experience I had in the coal business was probably in 1893 or 1894 in southwestern Virginia, where I was general manager of the Sandy Ridge Coal Company, and chief engineer of the Wise County Coal Company.

Q. Before that you were a civil engineer?

A. I am a mining engineer, and went to college and worked during my vacation on the United States Coast Survey.

Q. And you worked at engineering?

A. Continuously up to the time that I became a man-
2252 ager, and since then.

Q. And what year did you graduate?

A. 1890.

Q. From what institution?

A. The University of Pennsylvania.

Q. And with the degree of mining engineer?

A. Yes, sir.

Q. Now from 1893, when you say you started in the coal mines, briefly give your experience with the coal business until you get to Arkansas.

A. Well, I had that experience I already mentioned in Virginia, and then in Pennsylvania, central Pennsylvania, the Burwind-White Coal Mining Company. Interspersed were ex-

aminations and reports on various other mines during that period, and after I left the Burwind-White people I came out here to what was then Indian Territory.

Q. Were you in Mexico?

A. Yes, sir, and Canada, and a great many states.

Q. In the coal mines?

A. Not in Mexico in the coal mines, but in another kind of mine.

Q. Metal mines? A. Yes, sir.

Q. And then you came out to Indian Territory?

A. Yes, sir.

Q. And how did you start in the coal business there?

A. I got an operating contract from the Choctaw, Oklahoma & Gulf Railroad, which is now the Chicago,
2253 Rock Island & Pacific Railroad, for the operation of the three slope mines at the town of Alderson. I operated them under this contract for a year or two, and then sunk No. 5 shaft of the Chicago, Rock Island & Pacific, then the Choctaw, Oklahoma & Gulf, to the depth of about 500 feet, and opened that mine, and then took a lease from the Choctaw, Oklahoma & Gulf, which they had from the government, or rather then the Indian Nations, which was assigned to a company organized by me, and we put in about, I think, a hundred thousand dollars in sinking a shaft, another 500 foot shaft, and opening up about ten slopes along the outcrop of the coal, at a place about two or three miles east of the town of Alderson, which they called Bache.

Q. They still call it that?

A. Yes, sir, I am sorry to say they do.

Q. Now, how big a mine was that, per ton?

A. About 600 tons a day.

Q. When was that? A. That was about 1900.

Q. And about that time did you have any experience with the United Mine Workers in connection with a strike, and the employment of Federal marshals, and if so, very briefly state what that was?

Mr. Warrum: Defendants separately object to this, it has nothing to do with the issues in this case.

The Court: I don't think it has.

Mr. Drinker: I want to know why he felt it was necessary to have a Federal injunction. The Supreme Court
2254 seemed to think that the fact that he tried to protect himself and arranged his corporation so that he could have a Federal injunction, in some way contributed to the difficulties, and I want to show the history of it.

The Court: He asked for it and got it.

Mr. Drinker: Yes, sir, but they said the strike was contributed to by the huggery-muggery of his corporations, and I want to show that he leased this so that he could get a Federal injunction, and that he had experience before, and that he knew that was the only way he could protect himself against these people, that is, by having the Federal marshals on the property. That is the only purpose of this.

The Court: I don't see what that has to do with this controversy.

Mr. Drinker: I can not see how it can be irrelevant in this case for me to disprove the particular things that the Supreme Court talked about.

The Court: This has nothing to do with this case at all; it is too far back. You can talk about the Federal injunction in this case if you wish. Proceed.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

By Mr. Drinker:

Q. Go on with your experience after that.

A. Then I organized the Consolidated McAlester Fuel Company, a concern organized by three or four or five operators in the Indian Territory, for the purpose of jointly selling our coal on the markets that we could reach at that
2255 time, and for a couple of years I was president, if I remember correctly, of the Consolidated McAlester Fuel Company. Then we took an operating contract from the Choctaw, Oklahoma & Gulf, operating all of their mines in the Indian Territory, with a capacity or production, rather, of about four or five hundred thousand tons a year. We sank, under my direction, No. 8 shaft Hartshorne, and No. 7 shaft Hartshorne, and equipped it, and about the same time there was a concern known as the Mexican Gulf Coal & Transportation Company, that got into financial difficulties with the United States Court, and they appointed me receiver. That was about in 1901, and I operated their mines and coke ovens —they had 150 ovens—for 18 months.

Q. Going on from there, you are to Arkansas now?

A. About that same time somebody brought to my attention about 3,000 acres of coal land down at Hartford, west of Hartford, on the line of the—I will call it the Rock Island, it used to be the Choctaw, Oklahoma & Gulf,—on the line of the Rock Island, and I took an option on that property, and drilled out with a diamond drill.—

Q. You plugged it to see if there was coal down there?

A. Yes, sir, it was three or four hundred feet deep, and we did not know how thick it was, and we got a diamond drill and brought up the core to show how deep it was at that particular depth, and about the same time I bought 280 acres, if I remember right, from Judge Harp, Jesse Harp, very close to the town of Hartford. It was not then on any railroad.

Q. That was where the Hoffman and Dallas mines were situated?

2256 A. Yes, sir, and now are situated.

Q. Were you employed by the Midland Valley Railroad in the coal business?

A. Yes, sir, and before that I was employed by the Choctaw, Oklahoma & Gulf in one little capacity—I was not employed or paid, I was asked to locate their Ardmore branch that runs from Haileyville down to Ardmore, to get the road on the outcrop of the coal, so it would be able to get the coal traffic. Then about that time, 1902, the C. O. & G. was sold, lock, stock and barrel, everything to the Chicago, Rock Island & Pacific Railway, and all of our operating contracts were sold to the same interest, the Chicago, Rock Island & Pacific people. The Midland Valley people, those who became the Midland Valley people, were stockholders in the old C. O. & G., and got quite a bit of money out of the sale to the Rock Island, and decided to build another road to develop coal, and asked me to take charge, as far as the coal fields were concerned. It then became the Midland Valley, and they wanted the line near the outcrop of the coal, so the railroad could get the tonnage easily. I did that for them, and also bought for them several thousand acres of land in Sebastian County, and a little over in Oklahoma for about—I don't know how much, seven or eight hundred thousand dollars, perhaps a million dollars, the whole thing cost. At the same time I operated one or two mines for them for a year or so over here in Arkansas, and simultaneously was opening a mine over at Hartshorne, known as the Kali-Inla Coal Company mine; a slope mine, which is now operating there, and I took a

2257 lease from the government, and when I say that, I mean the Choctaw and Chickasha Indians, with the approval of the government, at a place near what is called Red Rock, near Berma, Oklahoma, and got the Rock Island to build a mile and a half of track from their main line into this place and developed it.

Along about the same time I bought some land where the Mammoth Vein No. 1 is located, about 200 acres in that purchase, and about 400 acres of land where the town of Midland

is now. It was a farm then, and I started the town of Midland, sold lots, and intended to open that mine there, and in fact started and got a shaft partly down, but never finished it. There was a mine on the place when we bought it, and we operated it for a year or two, just one corner of the land, but it did not amount to much as a mine, and we finally abandoned it. Then we had gotten about all the land that was valuable coal land, as it was scarce, we had gotten about all that was any good down here, and in order to get additional acreage to the land that we owned, and the mines that we were developing and intended to develop, we made leases from the Midland Valley Railroad interests of adjoining coal lands, so that we could drive our entries and development work into the other property, and get more coal coming to our mines, and we opened the Coronado property on the Frisco railroad at the town or station called Arkoal, this side of Huntington, with a shaft and slope; opened the Mammoth Vein No. 1 mine, with a slope about 2,000 feet long, which was opened on land owned by us, but the workings of the mine reached onto land that we leased below it. The
2258 acreage that we owned was very small there, only about 70 acres, and the life of the mine depended on the leased coal below it, where we had three or four hundred acres leased.

We arranged with the Rock Island Railroad then to build in about a mile or a mile and a half of spur track to that mine, in order that we might have two railroads to ship there, both the Midland Valley and the Rock Island. We also opened—we leased the land I first spoke of, that we bought from Judge Harp, we leased part of it to some young men named Hoffman, and they opened the mine as the Hoffman Coal Company. We leased another portion of that land to some one else, I really have forgotten who the first lessee down there was, it changed hands a number of times.

Q. Well, never mind.

A. We leased from the Midland Valley interests a mine generally known now as Little Six, or Mammoth Vein No. 6. We organized about the same time a concern known as the Midland Valley Coal Sales Company, or the Midland Valley Coal Company, for the purpose of marketing the coal, this Arkansas grade of smokeless coal, which we intended to market if we could.

Q. Is that all?

A. I can't think of anything else.

Q. While you were speaking of Hoffman mine, who operated it in 1914?

A. The Central Coal & Coke Company operated it at that time.

Q. And you had the lease?

A. Yes, sir, the Hoffman people had lost money, and
2259 gone in the hands of a trustee, I think it was, and I think the trustee turned the lease over to the Central Coal & Coke Company.

Q. It was known as Central No. 7?

A. Yes, sir.

Q. When did that lease expire?

A. About six months after our mines were burned, about January 1st, 1915.

Q. So you could have had it back in the next January if you had wanted it? A. Yes, sir.

Q. Now, approximately how much money did you and your associates invest in your coal properties in the Hartford Valley here in Arkansas, consisting of the Prairie Creek No. 4, Mammoth Vein No. 1, Mammoth Vein No. 6, Coronado, Hoffman and Dallas mines, up to 1914?

A. Between five and six hundred thousand dollars, about.

Q. Now, just very briefly state any investigations that you have made of coal properties for other people, in order to give your engineering experience, since then, and for what purpose, for bankers or people of that kind?

A. Since 1914 I have gone back more or less to the practice of the mining engineering, and have been sent out, mostly by bankers, who wanted to get a report on property where they are asked to make a loan, reporting on its value, and I will give the list briefly.

Q. I don't want to make you tell too much about yourself.

A. I understand. When I was up in Alberta, I in-
2260 vestigated the property of the Oliphant-Munson Coal Company.

Q. How much did that involve?

A. That was not for a loan, but advice as to the operation. I was up there two or three times. Another was in Belmont County, Ohio. There was a matter of purchase there of about three million dollars by a banking firm called Hadentyl-Hardy & Company of New York. Another the Rowland Consolidated Power Company; theirs was a valuation of about a million and a half dollars.

Q. Where was that?

A. That was in Indiana, south of Terre Haute. Another was the American Coal Company, and the Indian Creek Coal Company, and the Oliphant-Johnson Coal Company, west of Vincennes, Indiana.

Q. How much did that involve?

A. The valuation there was about six million dollars, the three mines.

Q. Any others?

A. The Electric Power Company at Danville, a valuation of about two million.

Q. Electric power company? A. Yes, sir.

Q. Was that a coal property? A. Yes, sir.

Q. You mean the Electric Power Company's coal property?

A. I mean that was the name of the coal company—let it go at that, it is close enough; it is a well known place at Danville.

Q. How much did that involve?

2261 A. About two million. And in connection, the Ziegler mine at Ziegler, Illinois, the Ziegler Coal Company was the owner, and I don't recall the lessee, but the total valuation was about seven million dollars down there.

Q. Any other?

A. That is all I think of at the moment.

Q. Do you know of any in Kentucky?

A. Yes, sir, the Himler Coal Company in Kentucky, on the Tug River, the valuation was $1,200,000.

Q. Do you know of any in West Virginia?

A. At the moment I don't—oh, yes, the Richland Coal Company, with a valuation of about two million dollars.

Q. Now, what was the purpose of these examinations?

A. Generally to make a valuation on which the bankers could base a safe loan.

Q. They hired you to tell them how much they could lend on these coal properties?

A. They hired me to examine the properties and make a report on their value.

Q. Taking up these six mines in Arkansas which you have mentioned, I want you to give, as to each one, one after the other the acreage of coal, a general description of the equipment and development, not in detail, but whether it was a slope mine, and wholly developed, or the approximate number of men employed when it was running, the actual production, and the capacity of the mine, with the same equipment that

2262 was in there, that is, without substantial alteration of the major items of equipment. Now, take Mammoth Vein No. 1, what was the acreage of that mine and the coal subject to it?

A. There was about 300—about 420 acres, and about 10 per cent, about 15 per cent worked out.

Q. In 1914? A. Yes, sir.

Q. All this relates to 1914?

A. I want to state there that part of that was land owned, and part of it was land leased.

Q. What do you mean, explain [the] the difference to the operator of leased and owned land?

A. I guess everybody knows, if you own it you take the coal out and pay no rent, and if you lease it you go ahead and take the coal out and pay on what we in our business call a royalty, which amounts to rent.

Q. What was the rate at Mammoth Vein No. 1?

A. 8 cents.

Q. Per ton? A. Yes, sir.

Q. And how long did you have to get that out?

A. Thirty or forty years.

Q. Did you have long enough to mine it all out before the end of the lease?

A. Yes, sir. In addition to the royalty, to pay so much a ton, and ordinarily if you don't mine the coal you have to pay a dead rent, dead royalty, of two or three or five thousand dollars a year, whatever it may be, as dead rent, which
2263 under some contracts you get back as a credit when you actually do mine the coal, and under other contracts you don't. Under our contracts we were supposed to get it back.

Q. If you did not mine any one year and paid $2,000, you mined 4,000 the next year for $2,000?

A. That is it, yes, sir.

Q. Now, what kind of equipment and development was at Mammoth Vein No. 1?

A. I have a very much enlarged photograph,—

Q. We will skip the equipment and development until we get those photographs. How many men were employed at that mine when it was running?

A. About 150, to the best of my recollection; it varied from day to day and month to month.

Q. Between what?

A. I would say 150.

Q. Each side of that?

A. Yes, sir, perhaps under it,—I don't know, about 150. That was 9 years back.

Q. What was the production per day of that mine in the beginning of 1914?

A. Six or eight hundred tons.

Q. Six or eight hundred tons? A. Yes, sir.

Q. And how much could that production have been increased under union conditions?

A. Under open shop conditions you mean?
2264 Q. No, under union conditions.

Mr. Warrum: The defendants object to that as calling for a conclusioin on the part of the witness.

The Court: Oh, it is so indefinite, supposing something should happen, another shaft was sunk?

Mr. Drinker: Then that would be a different mine, I am saying out of this same shaft—

Q. Is it a different mine every time you get a new shaft?

A. Yes, sir.

The Court: How much did you ever produce there?

By Mr. Drinker:

Q. How much did you ever produce out of this mine?

A. About 800 tons.

Q. Is that all you could have produced if you had had orders for more under union conditions?

A. No, if we had had steady working time, and could produce our coal cheap enough to sell it in a larger market, we could have run twice the number of days a year that we run, and increased our production, under union conditions, about 20 per cent, I would say, easily.

Q. And under non-union conditions, if you had been permitted to operate open shop, with the increased production which would have resulted, and the decreased cost, taking into account all the factors that you could under these open shop conditions, how much coal could you have produced out of that mine?

Mr. Warrum: Defendants renew their objection.

The Court: He can not do any more than guess, let
2265 him guess.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. From 1400 to 1600 tons a day, by working two men in a room.

Q. That has been explained by the other witnesses. How many men were you permitted to work in a room at Mammoth Vein No. 1, under the union contract? A. One man.

Q. Now this estimate that you have made, did that contemplate any material change in your equipment at the mine?

A. Practically none, except buying some additional mine cars.

Q. And laying some additional track?
A. Yes, sir; that is about all.
Q. Now take Prairie Creek No. 4, how many men approximately were employed there?
A. About the same as at the other mine, 150 or thereabouts—200.
Q. What was the production of Prairie Creek mine?
A. About the same, 800 tons a day was the maximum, or perhaps 900 tons a day in 1914,—eight or nine hundred tons.
Q. What could that mine have produced under union conditions?

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. With a steady run it would have increased the production over 20 per cent under union conditions.
2266 Q. How many tons could have been produced open shop?
A. It could have doubled its production.
Q. That is, doubled the first figure, not the second?
A. The first figure—gone to 1600 tons a day.
Q. Take Coronado, give me the number of men?
A. About 150.
Q. And the production, actual?
A. About 600 tons.
Q. Coronado? A. Yes, sir.
Q. Actual production?
A. Yes, sir; in 1914, 800, maybe six or eight hundred—I am distinguishing between what the mine actually produced, as well as I can, on any particular day in 1914, and what it was capable of producing.
Q. What was it capable of producing in 1914, under union conditions? A. About 800 tons a day.
Q. And what could it have produced a day under open shop conditions?
A. About 1200 tons a day—no, I will cut that—about 1200 tons a day. They had two men in a room in Coronado, and the increase in production would not have been so great under open shop conditions as at the other mines where we were only allowed one man.
Q. Take Dallas, how many men?

A. About 80.

2267 Q. What was the actual production?

A. About 300.

Q. What would the capacity be under union conditions?

A. About 300.

Q. And under non-union or open shop conditions?

A. About 500.

Q. Take Hoffman mines, the number of men employed—you did not operate it at that time?

A. Not in 1914, no, sir, we did not operate it until the winter of 1915.

Q. And how was that mine in size compared with Mammoth Vein No. 6, would it take about the same number of men to operate it?

A. There is no comparison between it and No. 6—you mean No. 1?

Q. I mean the Mammoth Vein 6, as to the number of men it would take to operate it—I thought I had taken up No. 6—take up Mammoth Vein No. 6 next; I beg your pardon. How did the Hoffman compare in the number of men necessary to operate it with the Dallas mine?

A. About half as many more, with one man in a room.

Q. How many men would that take to run it?

A. About 120.

Q. And how much was its production at that time, if you know? A. About 600 a day, I believe.

Q. And what was its capacity under union conditions?

A. About 800.

Q. And under open shop conditions?

A. About 1200.

2268 Mr. Warrum: We renew our objection to this line of testimony.

The Court: Let him answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Now, did you have a property at Midland at that time that was not included in any of these?

A. Yes, sir, we had a little short of 400 acres, which we owned at Midland, the coal on the surface, except what lots had been sold to make the town of Midland, and we owned the coal under it, which had not been operated, except in one corner, the southeast corner, which was operated many years ago, a small part of it, under the name of the Red Rock mine, located [it] Burma.

Q. What veins of coal were under that property?
A. We had what we called the thin vein.
Q. If a mine were sunk on that property—
A. To be accurate, it had about 3 foot, 4 inches, of clean coal.
Q. If a mine were sunk on that property, how large a mine would it be?

Mr. Warrum: That depends on how far down it was sunk, and what they would strike.

Mr. Drinker: Is that a sensible question?

The Witness: I am afraid not.

Mr. Drinker: All right, I apologize.

Q. You owned some mines at some time over in Oklahoma, did you, or controlled them?
A. Yes, sir, we owned a mine, the Kali-Inla mine.
2269 Q. What was the production of that mine in 1914?
A. Six or seven hundred tons a day.
Q. What was its capacity under union conditions?
A. About the same.
Q. And under non-union conditions?
A. About 30 per cent more than it was—we could have had about a thousand tons a day out of that, open shop.
Q. Now, let's get to the maps. I will show you these pictures of the mines, it is more vivid. What one is that?
A. That is No. 4 mine.
Q. That is Prairie Creek No. 4, is it?
A. Yes, sir.
Q. We have heard about it a lot, and I will show it to the jury. That is what it was before?
A. That is what it was before, a few months before it was burned down.
Q. And at the time it burned down?
A. Yes, sir.
Q. Now, what is this one?
A. That is Mammoth Vein No. 1.
Q. Mammoth Vein No. 1?
A. Yes, sir.

The Court: You had better have the stenographer identify them or this record will be all mixed up.

(Whereupon the protograph identified by the witness as Prairie Creek No. 4 was marked Exhibit 17, and that identified by the witness as Mammoth Vein No. 1 was mark-
2270 ed Exhibit 18, and also the second photograph identified as Mammoth Vein No. 1 was marked Exhibit 19.)

A. The one that way is the tipple at Mammoth Vein No. 1, and the mine on the Midland Valley Railroad. This tipple here is what we called the Rock Island tipple; we hauled the coal from that mine about a quarter of a mile overland to the spur track of the Rock Island, which you see there, which is about a mile and a half from the main line. Those are the two tipples to the one mine that I spoke about.

Q. What is Exhibit No. 20, this one I have here?

A. That is the Coronado Coal Company, shaft mine, and that building to the right is a washer; we had a washer there to wash the dirt out of the fine sizes.

Q. This is the one that got burned up, according to the testimony of the witness yesterday, Mr. Willsey. Now, what is Exhibit 21?

A. That is the Dallas mine, the mine down nearest Hartford.

Q. Now, what the the acreages adjacent to Prairie Creek No. 4? A. About 700 acres.

Q. In that big coal, how many tons run to the acre?

A. In six feet of coal—I will give it to you another way. That seam of coal, or a seam of coal one foot thick will contain about 1700 odd tons per acre. Consequently, a coal 6 foot thick would contain six times 1700 tons per acre of coal. You can not get all of the coal out—you can not cheaply, theoretically you might, but you would only get about a half or three-quarters of it out, and we figure roughly, say, a thousand tons per foot per acre. A seam of coal 6 feet thick has in it about 6,000 tons per acre of recoverable coal. Is that plain?

2271

Q. The amount you can get out depends to a certain extent on the efficiency of your operating force?

A. Yes, sir, it is not actually a thousand tons; it runs about that in this field.

Q. But the better you work it, the less you lose?

A. That is about as good as you can do with union conditions.

Q. About how many acres were adjacent to the Coronado mine?

A. Originally there were about 240 acres; something less than half of that had been exhausted at the time the property was destroyed. That coal was about 6 foot thick.

Q. And how much had Prairie Creek been exhausted?

A. About half of it was 6 foot thick, the other half was about 3½ feet thick.

Q. How much of Prairie Creek No. 4 had been exhausted?

A. Oh, just a little. The coal above the shaft level had been about one-half exhausted at that time; 50 or 60 acres, possibly, had been exhausted.

Q. Out of how many?

A. Six or seven hundred.

Q. How much acreage was adjacent to Mammoth Vein No. 4? A. You mean—

Q. I mean Mammoth Vein No. 6.

A. About 153 acres.

Q. And how much of that had been exhausted?

A. Practically none of it. I will have to make an ex-
2272 planation there. No. 6 mine was a shaft that I sunk for the Midland Valley Railroad, and then leased it from them to operate. It was located on a tract of land which we had at the time of this destruction, but that particular property was not destroyed. In 1914 we had worked out a large part of the land that originally went with that shaft, but the shaft was there, and was a well equipped shaft, and I made a trade with the Midland Valley Railroad by which they agreed I could have the use of that shaft for an indefinite period—not indefinite, but I can not remember the length of time, but a period long enough to take out coal from adjoining lands; that I could haul the coal underground through to the workings that were already developed, and hoist it up the shaft, and use their hoisting engine, and pay them 2 cents a ton for any coal that we hauled in that way. It was a good trade for both of us, otherwise their shaft was scrapped, they could not do anything with it, and it was a good trade for us, because we got for 2 cents a ton what we would have had to pay 15 cents a ton for on adjoining property. We also made a lease with the McKitchens, the McKitchen heirs, and I believe it measured out 153 acres, in 1914, and we had just driven quite a lot of slopes and narrow work into this McKitchen tract, but had not gotten any working places, or had turned any rooms, but we had paid the McKitchen people five or six thousand dollars in what I explained as dead rents, advanced royalties, which we expected to get back when we commenced taking coal out.

Q. How many acres were tributary to the Dallas mines?

A. About 120.

2273 Q. How much of that was worked out?

A. About one-third of it.

Q. How many acres were tributary to the Hoffman mine?

A. About 170 acres—I have to make a little explanation there. Those mines, the Dallas and the Hoffman, the Mammoth Vein No. 1 and the Prairie Creek No. 4 mines, were all

on property owned or controlled by us. And when I say that a certain acreage was tributary to any one of those mines, it is necessarily an approximation, because as the land was controlled by us, we could have taken out more or less coal in the course of years from one mine or the other, as conditions varied; you could not see quite that far ahead, so approximately I have given the acreage which was tributary to each one of the openings on these properties.

Q. Although you could switch the acreage from one to the other, but when we get through, the total would be the same?

A. The total is the same. Another thing I would like to bring out there, and that is that this land that we controlled was along the outcrop. There is a little sketch here—that does not represent anything in particular, only to illustrate what I have to say.

Q. This is the jelly in the cake, this black there?

A. That is the coal, and this the outcrop, and the farther down it gets, the farther from the surface, and the land we controlled lay along on that section, and the proportion of the coal lying down in here could only be worked out by the people who controlled the frontage, or outcrop. Down here it was so deep it would not pay to sink a shaft, a thou-
2274 sand feet or more, and it had to be worked out through these workings. I am speaking of the actual acreage we had under lease, and not of what we might have ultimately taken.

Q. You owned where the coal came out of the ground?

A. Yes, sir.

Q. And a slope mine goes down through the coal vein?

A. It is opened right on the outcrop. It follows the coal down, and you sink a shaft down to the coal, and that is the difference between a slope and shaft mine.

Mr. Drinker: Now, we offer these maps in evidence, Exhibits 17, 18, 19, 20 and 21.

Q. What acreage—you gave the acreage at Midland, did you?

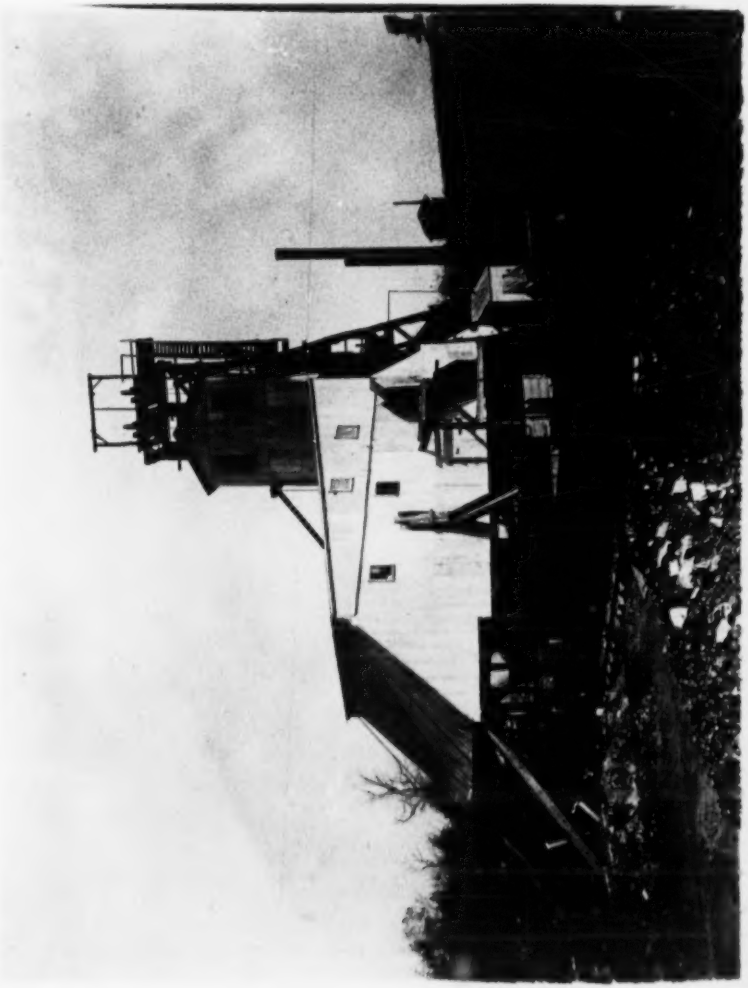
A. Yes, sir, nearly 400 acres, 370 I think.

Q. Now, as to the equipment in those mines, and their state of development. Mammoth Vein 1, what kind of a mine was that, and what was the equipment there?

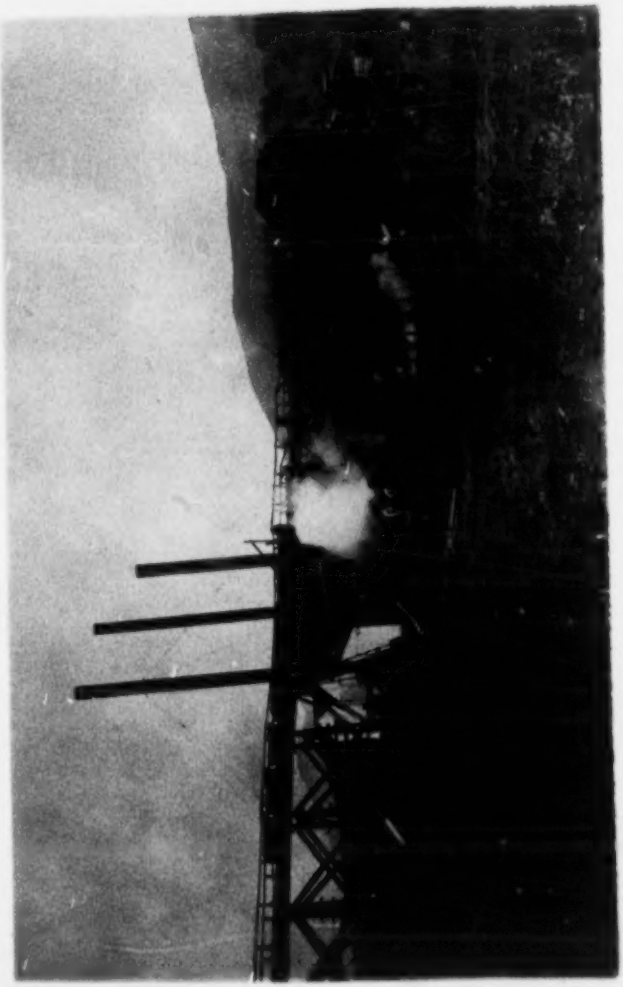
A. It was a slope mine, that started in at the outcrop, at the Midland Valley tipple that you see in the picture, the one underneath there, and drove down on that coal with a slope. Going down about 2,000 feet through the land we owned our-

selves into the land we leased, and we had taken very little coal off the land we leased. The coal was hoisted out by a double first motion engine, with cylinders about 12 by 30, or larger, and we had two fans for ventilating, and had a tipple with what we call a shaker screen. We would bring the coal out and dump it, bring it out in little mine cars and dump
the coal onto these screens, and the screens were flat
2275 sheets with holes in them, and they were shaken by a
steam engine, and had a little slant like, and the coal would run down over these, and the small sizes, the slack, as we called, dropped through the holes, and it was very much like you screen anything else, except they were shaker screens.

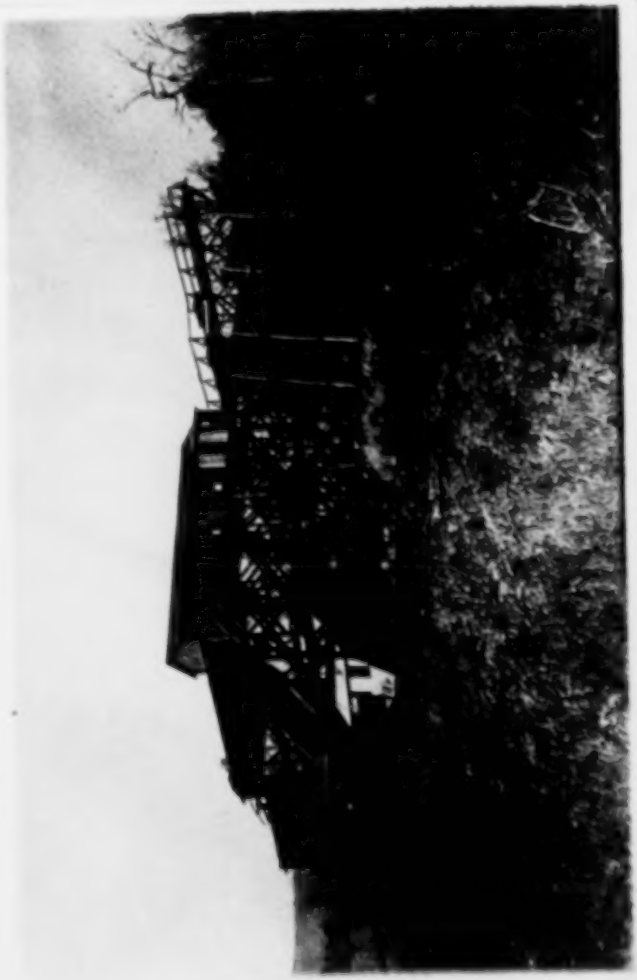
2276 (Plaintiffs' Exhibit 17, Photograph of Prairie Creek No. 4.)



2277 (Plaintiffs' Exhibit 18, Photograph of Mammoth Vein No. 1.)



2278 (Plaintiffs' Exhibit 19, Photograph of Mammoth Vein No. 1.)



2279 (Plaintiffs' Exhibit 20, Photograph of Coronado Mine.)



2280 (Plaintiffs' Exhibit 21, Photograph of Dallas Mine.)



2281 That was the Midland Valley tipple. We had all the boilers, the ventilators, the blacksmith shop and all the paraphernalia that go with it.

Q. I don't want any detailed description at this time. We will come to that later. We just want a picture of the property?

A. Yes, sir. One slope mine with two tipples.

Q. Fully developed?

A. Fully developed.

Q. What kind of condition were they in?

A. Excellent condition, no better in the state.

Q. What kind of a mine was Prairie Creek No. 4?

A. That was a shaft and slope mine. The slope went from the outcrop down about eighteen hundred feet, I think, to the shaft, and then a shaft was sunk about 250 feet deep to the coal.

Q. That means that you could either go down this way or go up this way?

A. Right down this way, (indicating on exhibit) here was the shaft like this, and we had a slope up here, and we would bring the coal right out here (indicating), and we put the empty cars on this track here (indicating), and would let it down and drop it right down the shaft, and the shaft engine would pull them up here where the railroad cars were, and we would load the coal right on to the railroad cars. At that mine we never had any work below the shafterlevel. There ought to have been some, but we never made a satisfactory contract to get it.

Q. Why couldn't you?

2282 A. We couldn't get the union to agree on a price for driving those slopes that would enable us to make any money above it.

Q. What was the condition of the equipment at Prairie Creek No. 4? A. Good.

Q. As good as Mammoth Vein No. 1?

A. Yes, I should say so. We kept all the mines up in very good shape.

Q. Now, Coronado, what kind of a mine was that?

A. That was a shaft mine and slope, very much like the one I have just described.

Q. How far down did it go?

A. Between one and two hundred feet.

Q. The shaft? A. Yes, sir.

Q. How far down did Prairie Creek No. 4 go, down to the shaft? A. Two hundred odd feet to the shaft.

Q. In what condition was the equipment at Coronado?
A. That was good. We had some old boilers there. The boilers were not as good as at the other mines.
Q. Mammoth Vein No. 6, Little 6, what kind of a mine was that?
A. That was a comparatively small mine, producing 600 tons a day. The coal was thin. It was only about three feet thick, sometimes as low as two feet ten. Over on the [on the] McKitchen lease, the coal was not very thick, two feet, two or three, or four inches. It was an expensive mine to operate on account of the thin coal. We had to brush to make space for the mules.
Q. By "brushing" do you mean you had to dig rock
2283 out in addition to the coal and throw it away?
A. Yes, sir. We had to shoot the rock out to make headway for the entries, but it was offset by the unusually good quality of that coal. We sold it under the trade name of Bache-Denman's Carbonita coal. We got a higher price per ton for it, and there was a good demand for it, and we could sell it on the market further away. We shipped a lot of it in the northwest. It was a hard coal, good for domestic purposes.
Q. How was the equipment there?
A. The equipment was appropriate for a mine of that size, shaft, hoisting engine, and so forth.
Q. In good condition? A. Yes, sir.
Q. What kind of a mine was the Dallas mine?
A. The Dallas mine was about a slope mine. It had no shaft.
Q. Was that fully equipped?
A. Fully equipped for a small mine.
Q. What condition was that in?
A. Good condition. We had a new boiler there, and practically a new tipple.
Q. Did the equipment in the Hoffman mine belong to you or to the Central Coal & Coke Company in 1914?
A. That was a mixed up kind of business.
Q. Don't explain it to fully?
A. In part it belonged to us, and in part it belonged to the Central Coal & Coke Company.
Q. The equipment?
2284 A. Yes, sir.
Q. Was the mine in good operating condition?
A. Yes, sir, except it needed pumping out when we took possession of it in 1915.

Q. Have you added up the figures as to the total acreage you owned, and the total acreage you leased? If not, will you do it so you can testify to it tomorrow?

A. Yes, sir. If you want it accurately, I will have to do it tomorrow.

Q. Will you do that, so you can state the total acreage you owned in the Hartford Valley and the total acreage you leased and add up the total amount of minable coal left on each of the properties, that is, taking into account the amount you could get out and what you would have to leave there, and the amount you had already mined out, so as to get the total amount of workable coal in the land owned and the land leased. I will ask you about that tomorrow morning.

A. All right.

Q. In which mines were you allowed to operate two men in a room, and in which mines were you only allowed to operate one in, in Arkansas? A. Only one, Coronado.

Q. Only one that you could operate two men in?

A. Yes, sir.

Q. And the others only one? A. Yes, sir.

Q. How did there happen to be two men in a room at
2285 Coronado, very briefly?

A. Under the union contract Coronado took the Huntington conditions. Those conditions provided the right to operate and work two men in a room.

Q. And the other mines only one man in a room?

A. At the other mines only one man in a room. There was no mines in this field with two men in a room, except the Central mines in the Huntington basin, and our Coronado mine.

Q. The Central mines in the Huntington basin were your principal competitors, were they?

A. Yes, sir, the central mines in the Huntington basin were our principal competitors, the only large competitors we had, in fact.

Q. Have you looked over the geological reports so you can state the total production in Arkansas in 1913?

A. Yes, sir.

Q. What was it?

A. About 2,200,000 tons, including Arkansas Anthracite.

Q. What was it in 1914?

A. About 1,800,000 tons.

Q. That is from the geological report?

A. Yes, sir, the report of the United States Geological Survey.

Q. Those were the two years, 1913 and 1914?

A. Yes, sir.

Q. At this time 1913 and 1914, what, if any, companies produced a larger tonnage of coal in Arkansas than your company? A. The Central Coal & Coke did, I know.

2286 Q. Did any others?

A. I don't know whether the Western Coal & Mining Company produced more coal than we did or not. The Western Coal & Mining Company was run for the purpose of making fuel for the Missouri Pacific Railroad. It did not compete very much on the market.

Q. Did they produce as much coal sold on the open market as you did?

A. I am very confident they did not.

Mr. Warrum: If the court please, we object to this as utterly immaterial, whether some other company produced as much as this company did or not. It tends to throw no light on the issues in this case.

By the Court:

Q. I understand this company you now speak of turned its output over to the railroad?

A. Yes, sir, it was owned by the railroad.

By Mr. Drinker:

Q. Was the rest that it did not turn over to the railroad, as great a tonnage as your company?

A. I think not.

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. You think not? A. No, sir.

Q. Does that make your company the second largest producer of coal in Arkansas? A. I think it was.

2287 Q. Is there any question about that?

Mr. Warrum: We object to the question for the reasons given heretofore.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. You say there is no question about it?

A. It was certainly either the second or third largest producer. I think it was the second.

Q. Now, as to the market in which your company distributed its coal, what proportion of your output in the year 1913 got outside the state of Arkansas?

A. 75 per cent.

Q. Approximately? A. Approximately.

Q. Could you have operated your properties on the tonnage that you were able to sell in the state of Arkansas?

Mr. Warrum: The defendants object, if the Court please, because it is absolutely immaterial.

Mr. Drinker: I am just trying to show the interstate markets are absolutely essential to the operation, and when they destroyed it, it was an interference with interstate commerce.

The Court: Answer the question.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. No, sir.

Q. Did your business consist of spot sales or contract
2288 sales or what?

A. The business consisted partly of contract business and partly of what you term "spot" business, although that is not the term we use here.

Q. That is the eastern term?

A. Yes, sir. Contract business and current business is what it consisted of.

Q. Have you any idea of what proportion they bore to one another?

Mr. Warrum: The defendants object to that as incompetent and irrelevant.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. Taking them out as a whole, about half and half. It varied in different mines.

Q. Now, describe what markets your coal was shipped to?

The Court: He said 75 per cent. of it was sold in interstate commerce.

Mr. Drinker: Yes.

The Court: Then 25 per cent. was sold here. What does it matter where it was sold.

Mr. Drinker: I want to show the effect of the destruction of his property. If he could have gone open shop, he could have extended his territory.

The Court: It would be just the same coming from one state as another.

Mr. Drinker: Not if he sold it all in competition with
2289 non-union coal. If he sold it in competition with union coal, that would be true. If [—] sold it in West Virginia it would be of less importance than if he sold it in competition with Iowa coal. I think it is a very important question, your Honor, as to whether he sold it in competition with union coal or non-union coal. That is what I want to show, and I don't see how I can do it otherwise.

The Court: Let him answer.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: Your Honor, I have considered this carefully, and if you knew how much I have left I am sure your Honor would be more patient with me.

The Court: I haven't seen anything left out yet. Proceed.

Q. Answer the question. Describe what markets your coal was shipped to. Make it short.

A. The Small sizes used for steam coal was shipped to the markets of Northern Texas, Northern Louisiana, Central Arkansas, some to Oklahoma, some to Kansas City, Kansas, some to Kansas City, Missouri.

Q. What coals did they meet in those markets, where mined and by whom, principally?

Mr. Warrum: The defendants renew their objection.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. The steam sizes we have spoken about met in
2290 Eastern Arkansas, coal mined in open shop mines in Western Kentucky and in Alabama. In Texas the steam size met the competition of Texas lignite open shop produced, and the competition of open shop coal produced in

Colorado and New Mexico. In the north it met the competition in Kansas City and up along the main line of the Frisco of coal produced in union mines in Kansas, Missouri, and Illinois. That is answering as to the steam size, by which I mean the screenings.

Now, as to the lump size, that went to another market altogether. The lump size of this Arkansas coal was used for domestic purposes. We had a little market for that in a few sections in Texas, and some in Oklahoma City. The chief market was in Kansas City, Missouri, Lincoln, Nebraska, Omaha and up in Minneapolis and St. Paul and northwestern cities.

Q. What coal would it meet at those various points?

A. At Dallas and Oklahoma City it came in competition with Oklahoma coal, and Colorado coal. At Kansas City, Missouri, it came in competition with coal mined in union mines in Missouri, Kansas and Illinois. In the northwest, that is to say, Minneapolis and St. Paul and contiguous territory, it came in direct competition with the same quality of coal. That is to say, smokeless coal, as that was, mined in West Virginia and shipped up by way of the Great Lakes into Duluth, the head of the lakes, partly all rail to these points. Also competed with the Illinois coal and some Pennsylvania coal that came up over the lakes, too. When you get up at the head of the lakes, you come in competition with
2291 pretty much everything except far western coal.

Q. Please describe briefly—

A. There is still another grade of coal.

Q. Just go ahead and explain about that?

A. That is mine run coal. We have spoken about the screenings that go through the screen, the small sizes, and the lump is the big size that goes for domestic purposes and the third [grad] is mine run, just as it came out of the mine, no screenings. That was sold to the railroads, Frisco, Rock Island and Midland Valley, and originally, before we were forced back by high costs to the Southern Pacific, San Antonio & Arkansas Pass, all of the railroads in Texas, although we gradually lost those contracts on account of our costs. But that mine run coal was a very important part of our business, and was mostly sold to railroad companies, like the Rock Island, Midland Valley, Frisco, Cotton Belt, the Missouri, Kansas & & Texas, Missouri & North Arkansas, Texas Midland.

By Mr. McDonough:

Q. Memphis, Dallas & Gulf?

A. The Memphis, Dallas & Gulf took it. The Louisiana Railway & Navigation Company took it. That is all I can think of. There are doubtless others.

By Mr. Drinker:

Q. That is enough. Now, will you please describe in a few words the different coal fields, including the anthracite, just briefly, in two or three minutes?

A. All right. Bituminous coal is in the northern half of the state. I will commence on the east and go through as fast as I can. Pennsylvania is the largest producing state
2292 of bituminous coal.

Q. That is where all the anthracite is?

A. Yes, sir, all of the anthracite. There is no other in the country, excepting a little so-called anthracite in Arkansas, which is really not anthracite. You have the bituminous in Pennsylvania, and you go south to the next state, Maryland, and south again to West Virginia. West Virginia produces a grade of coal very much like we have down here, smokeless coal. South of West Virginia you come into Old Virginia, and there is some little coal produced there. Then down to Alabama. I am taking the seaboard states.

Take another tier of them, starting in Ohio, a very large producing state. South again into Kentucky, south of that into Tennessee, and Alabama, which I think I mentioned. Going west again we get to Indiana and west of that Illinois, north of Indiana, Michigan where there is some bituminous coal produced. Then west of the Mississippi River we have Iowa, the state farthest north that produces coal, and the Missouri and Arkansas. Going on north again and coming down, there is no coal in Nebraska, but coal in Kansas, coal in Oklahoma, coal again in Texas, both bituminous and lignite.

West again to the mountain states, coal in Montana, Wyoming, Colorado, New Mexico; west again, a little bit in Idaho, a large amount in Utah. I don't think any in Arizona, that I know of. Then west again, coal in Washington. If there is any in Oregon or California of any consequence I don't re-
call it. I think that covers the states. There is no coal
2293 in the New England states and no coal in New York.

Q. Now, will you describe the factors which affect the extension of a market for a coal operator?

A. The factors that affect the markets of a coal operator is the delivered cost. Mark the difference. I say "cost" not "price". The delivered cost of coal at the point of consumption. Now, that delivered cost is made up of two things. One

is the freight rate, which is practically fixed. You can't change it except through the Interstate Commerce Commission. The other is the cost of production at the coal mine. That cost of production at the coal mine is affected by two things. The first which you cannot change is the physical conditions, the thickness of the vein, the quality of the roof, pitch of the bed, thing the Lord made and we can't change. The only thing you can change about a mine is the operating cost, which is made up in this field of about 75 per cent. labor.

[Thos] are the factors, the cost at the mine and the freight rate, that enter into the cost at point of consumption. The cost of the mine is made up of two things—one we can change, labor, the quality of management, and so forth, and the physical conditions at the mine, we cannot change.

Now, you take two coals, coals from two fields, hundreds of miles apart, with a consuming territory in between these two fields. If the cost of production is the same at the mine in each field, and the freight rate is the same—and the freight rate is generally based on distance, more or less—those coals will meet, and there will be a line about half way be-
2294 tween the two fields, which will separate one from the other. It is not sharp. Competition will put it one way or the other, but in a general way there is a line between them. We call that the line of competition.

Now, if one coal, for any reason at [call,] can be produced cheaper from one of those competing fields, it will extend its territory past that line, or push that line toward the mine having the higher cost, the district with the higher cost. The more he can expand his market the more days per year he can run his mine, the more days he can run his mine, the cheaper per ton the coal will be produced. The great desideratum of a coal mine is to run every day, if it can.

Now, that is one kind of competition. That is the competition that comes from a distance. The mine that is at a disadvantage on account of its cost at home always, even in the most extreme condition, is protected by a freight rate, because the farther the other coal comes the higher freight rate it will have to pay, and the nearer you are to your mine the lower your freight rate, and the further the other fellow comes the bigger his handicap is. In that way you are protected in a little by your home market. No matter how bad things may be, you have always got that little haven of refuge where you can ship a little coal.

The other kind of competition is the competition from the mine right alongside of you, that has the same freight rate that you have. If the mine right alongside of you can for any reason produce coal cheaper than you can produce
2295 coal, then he can take his coal—

Mr. Warrum: We would like to object to the argument being made by the witness.

The Court: I don't know that I heard the question asked.

Mr. Drinker: I asked him to describe the different factors.

The Court: I think you had better ask him another question.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Coming to our relations with the United Mine Workers, have you operated both closed shop and open shop?

A. Yes, sir.

Q. When did you operate open shop, other than this experience you had in 1914?

A. [Mine] mines in Indian Territory were operated open shop by me from 1898 to 1902, about four years.

Q. Did you hear Mr. Freeze and Mr. McAuliffe and Mr. Hanraty testify as to the difference in cost of operation, closed and open shop?

A. I heard more or less of it, not all of it.

Q. I don't want you to go all over that, but I want to ask you about a few other conditions affecting the cost of operation as between the two states. What, in your opinion, is the most important condition affecting the cost of operation in the two states?

Mr. Warrum: The defendants separately object to the question for the reason that it is immaterial, and does not tend to throw any light on the issues here.

2296 The Court: Oh, let him answer.

To which ruling and action of the court the Defendants and each of them at the time duly excepted and still except.

A. The absolute impossibility of having friendly relations with the men working for you.

Q. Explain that?

A. Well, under the open shop the men that do good work, you can give them higher wages without affecting every man in the mine. You can reward the efficient man. Under the closed shop the feeling of antagonism is encouraged by the

union, creating a state of industrial warfare and class consciousness.

Mr. Warrum: The defendants separately object to that answer, if the court please, because it is purely speculative, is an opinion on the part of the witness. He is not stating what the facts are, but is trying to characterize a certain attitude.

The Court: It is very apparent, after all that he preceded this, that this witness is not very friendly toward one branch of miners, at least.

Mr. Drinker: Will your Honor allow me an exception to your Honor's refusal to allow me to follow these points as I wished to do?

The Court: Very well. Proceed.

Mr. Drinker: I will make an offer for the record.

The Court: Just ask him a question.

Q. Will you please describe fully all the conditions affecting the cost of operation of a union mine as de-
2297 tinguished from a closed shop mine. Don't answer until they have an opportunity to object.

Mr. Warrum: That is not your previous question.

Mr. Drinker: That is what I was going to ask, and that will take a long time.

The Court: Proceed.

A. One additional expense caused by the union condition is that the men will not go to work, will not go down in the mine unless there are sufficient railroad cars at the tipple to insure one day's work, or a considerable part of one day's work, even if the operator or his superintendent calls up the train dispatcher and assures the miners that the cars will be there in a half an hour, or something of that kind. In that case, you have an idle day with all the expense of your mine foreman's wages, your hoisting engineer and every other expense without a pound of coal going out to bring in any revenue.

Q. How about funerals?

A. The mine would frequently lay idle on account of funerals. The mines would shut down on that account. There is no possible objection to people attending funerals of people they wish to attend but a mine is frequently shut down on ac-

count of a funeral to which practically none of the employees go. It is simply made an occasion for taking a holiday.

Q. Do you know how many funerals that you had in your [mind] during 1913?

A. We had six or seven shut downs on account of funerals.

Mr. Warrum: Q. Sixty-seven?

2298 A. Six or seven.

By Mr. Drinker:

Q. How about objections to different kinds of mining machines?

A. There has always been great difficulty in getting a scale under which it would be advantageous to put in operation in coal mines, mining machines, which machines are distinctly advantageous to the operator.

Q. What, with reference to work on idle days?

Q. In an open shop mine it is customary, when the mine is not loading coal, that is to say, when there are no railroad cars—

Mr. Warrum: He just testified to that if the court please.

The Witness: No.

The Court: I don't think so.

Q. Did you? A. No, sir

Mr. Drinker: I don't think he did your Honor.

The Court: He said he did not.

Mr. Drinker: I beg your pardon, sir, go on.

A. Working on idle days means the miners going inside of the mines and doing work in their individual working space on a day when the mine is not shipping coal. That is what we mean by working on the idle days. Every miner in a mine has his own working space. There is always something that can be done in there, propping up a roof, laying track, throwing dirt back in the gob, even loading coal and preparing it and getting it ready to load, so as to ship it the first day the mine works. In an open shop mine the miner can go in there on an idle day and do that kind of work, so that on the
2299 next day on which the mine ships coal, the production will be larger, and you will get more coal out, although you are paying no more wages to your hoisting engineer or your monthly men and all that sort of expense for the larger production than for the smaller production.

Q. Under the union conditions is there any difficulty in controlling the amount of powder used by the miners, that could be obviated under open shop?

A. Yes, sir. Owing to the lack of discipline, the difficulty in having men disciplined or discharged, it is very difficult indeed to limit the amount of explosives used in shooting down the coal, which is very detrimental to the operator, because he gets two or three or four times as much for his lump coal as he gets for his screened coal, the stuff that goes through the holes in the screen. The larger amount of explosives used the more the coal is shot up, and the smaller amount of lump he gets, the larger amount of cheap coal he will have to sell at a lower price. The miner gets along easier by putting a big shot in. It shoots the coal up and he has less picking down to do, and it is easier for him, but it is very costly for the operator, and under union conditions it is exceedingly difficult to control that situation

Q. What about the doing of development work when the mine is shut down?

A. In all fields at different seasons of the year there is a greater demand for coal than at others. Down here, of course, the season when we have the greatest demand is in the
2300 winter, when it is cold. In the spring and early summer it is a dull season, and a mine may be shut down for weeks at a time. During that slack time most operators are anxious to get their development work ahead. Development work in a mine is absolutely necessary to keep up the output. In the open shop field, you can, in dull times, arrange to have the development work done, getting out a very small amount of coal, which you can sell or burn yourself to some extent, but when the big season comes on you can get higher prices for your coal and there is a greater demand for it and you can put more men on and get a bigger production. Under the union it is very difficult to get that done, to have development work done in dull seasons.

Q. Like that shop Mr. Freeze talked about having been developed in the dull season?

A. Yes, sir.

Q. How about an arrangement for a price as to the development of slopes, such as that. Make that brief, Mr. Freeze explained it.

A. The making of the price for driving slopes in a mine was under these contracts with the union left to local settlement. It was not settled in the general contract making but had to be settled with the men at that particular mine, and the mine's foreman, and if they couldn't agree there was no

way of going beyond it. They stopped right there. If the miners asked a price which you could not afford to pay, you just stopped. You could not develop your mine any further as far as the slope went, which was the case with two of our mines.

Q. Which were they?

2301 A. Coronado and No. 4.

Q. How about changing from one system of mining to another?

A. In the operation of a coal mine you may start off with one system of mining. I don't want to go into the technical details but you can imagine the various ways you might get out coal, according to the pitch of it and one thing or another. You might proceed in that way, and you may find you have made a mistake, and the way you started off was wrong and you want to start off according to another system. You may want to change from the room and pillar system to the panel system or even the long wall system. Under the rigid conditions of the union contract it is exceedingly difficult, if not almost impossible, to change from one system of mining to another. As soon as you undertake to make that change your miners will say that is a new condition coming in there, and that opens up the whole business, and they demand pay on a scale so high that you simply decide that you had better not adopt the new system you intended to use and keep on mining as you have been under a system which is costly and disadvantageous to the operator.

Q. How about the idea of insisting on one job for one man?

A. In a good many of the mines the men will not do two kinds of work. It is not by any means universal, but it is a condition that applies in a number of mines; in fact, in all mines with some men. For instance, the shot firers. Their work amounts to two or three hours a day. There is [not] reason why they should not stay in and pump the mines, attend the pumps. It does not amount to anything, watching the pumps, but their job is shot firing and that is all

2302 they will do.

Q. Is there any difficulty in connection with the familiarity or interpretation of a union contract and conditions?

Mr. Warrum: If the court please, we object to this, because it enters into such a vague and uncertain field. I suppose there may be difficulty in construing and interpreting all contracts.

Mr. Drinker: It is the same thing Mr. Freeze testified to, that you have to have a foreman that is a specialist on contracts instead of a specialist in mining coal.

The Court: He may answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. The contract between the miners and operators is about 100 pages, a pamphlet of about 100 pages. That has been expanded, unfortunately, or fortunately, I don't know how to put it, by decisions or arbitrators and commissioners, and such as that, to enormous proportions. There is nobody, not even the most experienced union men we have, who know all of that contract, or the effect of all those decisions.

Mr. Warrum: If the court please, that answer is a conclusion and opinion on the part of the witness.

The Court: He may state what has been done, but what others know is not competent for him to state.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

2303 Q. Is it necessary, in order to operate a mine under union conditions, and was it in 1914, to have a mine foreman who was a specialist in respect to knowledge of the contract?

A. It was more important to have a mine foreman who knew the contract and could keep away from conditions being put on you that would add to your cost, than to have a mine foreman that knew how to operate a coal mine in other particulars.

Q. Was it possible in a union mine to reward and promote efficient company men? A. Not practical.

Q. Why?

A. Because if you advanced the wages of one man, it [because] a fixed condition, and that job, no matter how inefficient his successor at some future time might be, would take that same wage.

Q. In your opinion, was it in 1914 conducive to economical cost of operation to make a general reduction in wages?

A. On the open shop basis?

Q. In going from a union to open shop basis, as conditions were in 1914, in your opinion, would it have materially decreased the cost of production to have made a general reduction in wages?

Mr. Warrum: The defendants object to that question, if the court please, because it is immaterial under the issues in this case.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. Well, of course, if you made a general reduction in wages you would decrease the cost of production, but
2304 you would not have had any men. It was not practical.

Q. I mean, as a practical matter, would it have decreased the cost of production or decreased the cost at which you could put the coal on the market in large quantities, to have made a general reduction in wages?

Mr. Warrum: We object to that question, if the court please, because it involves and calls for a speculation on the part of this witness. Decreasing wages would naturally decrease the cost of production.

The Court: He may answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. Go on, and explain your answer?

The Court: No, just let him answer.

To which ruling and action of the court the [plaintiss] and each of them at the time duly excepted and still except.

Q. Answer the question?

A. Yes, a decrease in wages would undoubtedly have decreased the cost of production.

Q. Would you have got the same efficiency in your mine, in a case of a general reduction in wages? A. No.

Q. Would that decreased efficiency have affected the general cost of getting your coal out?

Mr. Warrum: We renew our objection.

The Court: Oh, let him answer.

To which ruling and action of the court the defendants
2305 and each of them at the time duly excepted and still except.

A. Yes, sir, decreased efficiency always affects the general cost.

Q. If you had been permitted to get your mine going open shop in 1914, would you have made a general decrease in wages? A. No.

Mr. Warrum: The defendants object to the question, if the court please, because it calls for a motive on the part of this witness. He can state the fact and the jury can draw their inferences from it. It is impossible to cross examine him as to his intention.

The Court: This all refers to a future time.

Mr. Drinker: The Supreme Court makes it necessary for me to find out what Mr. Bache intended to do.

The Court: Let him answer, but we are going on here eternally, leading from one thing to another, and we will never get anywhere.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: If your Honor please, if I could be permitted to go on with this, I would not be very long with it.

The Court: All right.

Mr. Drinker: With the greatest respect, I do think the interruptions take as long as the answers.

The Court: Proceed.

Q. Did you understand the question?
A. No, sir.

2306 Mr. Drinker: Read the question.

The Witness: I have answered the question. I said no.

Q. Why not? Make your answer snappy.
A. Because a general reduction of wages would not make it possible for me to get the efficient men that I desired in open shop operation.
Q. What kind of an adjustment in wages would have, in your opinion, materially decreased the cost of production at that time, under open shop conditions as distinguished from union conditions.

Wait a minute until they object.

Mr. Warrum: The defendants object to the question, if the court please, for the reasons heretofore given.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. I intended to increase the wages of those men who do skilled work, and for those men who do unskilled work I intended to pay less wages, and get men from outside of the mine, men who were working on the railroad tracks and that kind of thing. The work of a mine as conducted in a union mine is partly skilled and partly unskilled work. The large part of a miner's work is shoveling coal from the mine into a pit car.

The Court: Very well. Let us stop at that.

Mr. Drinker: This, if Your Honor please, is very important and it won't take but a minute.

The Court: Ask your question and let him answer it.

2307 To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. What adjustment were you going to make or what kind of an adjustment did you consider as proper to reduce your cost?

The Court: He said that he intended to reward those who were skilled by an increased wage and would hire unskilled men for unskilled work. What more could he say.

Q. Did you finish answering that question?
A. I don't remember.

Mr. Drinker: I would very much appreciate it, if your Honor please, if this witness, who is our principal witness, could be allowed to tell his story. It will not take very long I will try my best to hurry, your Honor, if I may be permitted to go on.

The Court: It is not so much a question of hurry, but to get matters in some concrete shape. Mere speculations and opinions don't help.

A. I explained that the labor of a miner under union conditions was partly skilled but chiefly unskilled, and I proposed, instead of having one man mix up the different kinds of work to divide it so one man would do nothing but skilled work and another man do nothing but unskilled work.

Q. What was the proportion of skilled and unskilled?
A. About one fourth skilled and three fourths unskilled.
Q. Now, if you had got your mine going open shop did you intend to cut the price at which you sold your coal, and if so, to what extent?
2308 A. I did intend to cut the price of the coal sufficiently to enable us to operate our mines practically full time; in other words, to reduce our price sufficiently in the competitive market to enable us to get business in markets that theretofore we had been unable to reach on account of our cost, and also to take in other business that I could get.

Mr. Warrum: He has answered the question, and now he is making an argument or a speech.

The Court: I think so.

To which ruling and action of the court the plaintiffs and each of them at the time duly except and still except.

Q. What amount per ton, in your opinion, taking everything into consideration, increased the production, adjustment of wages, everything that you could have done under the open shop system, which you were not able to do under union contract, what amount per ton would you have reduced your cost of production in 1914?
A. From 50 to 75 cents a ton.
Q. Go briefly over your relations with the union, so we will get down to 1914. You operated open shop from 1898 to 1903?
A. 1902.
Q. 1902? A. Yes, sir.
Q. And during that time did you oppose signing up with the union? A. Very strongly.
Q. Did you always oppose that, ever since?

Mr. Warrum: If the court please, if he signed it, I don't think it is competent to ask him what the condition of
2309 his mind was. He was a member of the Operators' Association, and dealt with the union. This is utterly immaterial.

The Court: He may answer it.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Q. Did you?
A. Yes, sir, I have always opposed the relation between the operators and the union mine workers as conducted.
Q. By whom?
A. By the officials of the union.

Q. And each time you entered into a contract it was because you believed you could not help yourself?

Mr. Warrum: Now, if the court please, we certainly object to that because it is leading, and trying to get from this witness an opinion and conclusion.

Mr. Drinker: Yes, it is leading. I will withdraw the question.

Q. Why did you sign up the various contracts you signed with the union?

Mr. Warrum: The defendants object to that question, if the court please, because he signed the contract, and his condition of mind is not material.

The Court: Let him answer.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. Because I feared if I did not sign the contract and attempted, as I would have to do, to work open shop,
2310 there would be violence and possibly destruction, and therefore I signed the contract.

Q. Now, the agreement that constitutes the Southwestern Operators Association, did that obligate the members to [state] in the association for any particular length of time?

Mr. Warrum: That agreement, if it is in writing, will speak for itself.

Mr. Drinker: It will take a lot of room in the record.

Mr. Warrum: There has been a lot of room taken.

The Court: If the contract makes that provision in writing, that would be the best evidence.

Mr. Drinker: There is no doubt about it being the best evidence. It is a great long thing, and will encumber the record, but if the other side presses their objection, I will have to put it all in.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. In 1910 you made an attempt to run open shop, did you?
A. Yes, sir.
Q. Just briefly, what happened?
A. We put some men to work in a strip mine near one of the mines near Hartford and they worked one day, I believe,

and they were driven out by a part of several hundred men. scared of.

Q. Did you read that article in the Journal, or hear that article I read yesterday, about the 1400 men marching on the Central Coal & Coke Company's mine No. 4 in 1910?

A. Yes, sir.

Mr. Warrum: That was objected to and ruled out.

2311 The Court: I don't remember.

Mr. Drinker: No, it was admitted.

Q. Did you hear that?

A. Yes, sir.

Mr. Drinker: The article said that the Central Coal & Coke Company No. 4 mine, and I want to show that meant his mine.

The Court: Very well.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. Did you hear that article?

A. Yes, sir.

Q. Was there any Central Coal & Coke Company No. 4 that attempted to run open shop that year?

A. No, sir.

Q. At Hartford?

A. No, sir.

The Court: Gentlemen of the Jury, we have again reached the time to take an adjournment until 10:00 o'clock tomorrow morning. Under the admonition I have heretofore given you, you may pass out.

(Whereupon, at 4:30 o'clock P. M., an adjournment was taken until Wednesday, the 24th day of October, 1923, at 10:00 o'clock A. M.)

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2312 Wednesday, October 24, 1923, 10:00 A. M.

Pursuant to adjournment, at 10:00 o'clock A. M., on Wednesday, October 24, 1923, court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record.

The Court: The jury are present. Proceed with the trial.

Mr. Drinker: If the court please, Mr. Puterbaugh, the selling agent of the Bache-Denman Company, is here, and his mine has just burned down and he wants to go back, and I would like to excuse Mr. Bache temporarily and put Mr. Puterbaugh on.

The Court: Very well.

J. G. PUTTERBAUGH, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is J. G. Puterbaugh?
A. Yes sir.
Q. Your office and residence is at McAlester?
A. Yes, sir.
Q. What is your business?
A. President of the McAlester Fuel Company, wholesale coal.
Q. Were you in that business in 1914?
A. Yes, sir.
Q. Your company's general offices are at McAlester?
A. Yes, sir.
Q. Where have you branch offices?
2313 A. At Kansas City, Missouri, Omaha, Nebraska, Oklahoma City, Oklahoma, Dallas, Texas, Little Rock, Arkansas.
Q. How long have you been in the coal business?
A. About 30 years.
Q. Have you sold coal and operated coal mines, both?
A. Yes, sir.
Q. What experience have you had in operating coal mines?
A. I have been interested in several coal mines for the past ten years.
Q. Just briefly go over your experience in operating coal mines.
A. Well, I became interested in the coal mines in Oklahoma in about 1910, and in Arkansas in 1913, and have been president of some five or six coal mining companies in Oklahoma and Arkansas since that time.
Q. You were in charge of the operation of those mines?
A. Yes, sir.
Q. Are you operating any coal mines now? A. Yes, sir.
Q. What? A. Which mines?
Q. Yes.

A. The Bernice Anthracite Coal Company of Russellville, the Greenwood Coal Company of Greenwood, the Blue Hills Coal Company of Coal Hill, the Carbon Coal Company of Carbon, Oklahoma, the Pierce Coal Company of Adamson, Oklahoma, the Thomas Coal Company at Blanca, Oklahoma.

Q. About what would be the daily output of all of them?

2314 A. About 2500 tons a day.

Q. What experience have you had in selling? Just be brief.

A. I started in the coal business in Hutchinson, Kansas, in 1895, retail coal business, and was engaged in that for several years, and then I traveled and sold coal in Kansas for several years, and then I got in the wholesale coal business, and became president of the McAlester Fuel Company, a selling organization in McAlester, in 1907.

Q. The McAlester Fuel Company sold coal for—

A. A number of mining companies.

Q. About what annual tonnage did you sell in 1913?

A. About a million tons.

Q. Did you in 1913 and 1914 sell some part of the output of the Bache-Denman mines in the Hartford Valley?

A. Yes, sir.

Q. What part?

A. We sold a very substantial part of what those companies produced.

Q. Approximately, what proportion of the Bache-Denman Company's output, at the end of 1913, or during 1913, was sold to be shipped out of the state of Arkansas?

The Court: If he knows.

Q. (continuing) If you know. Do you know?

A. Of the coal we sold, which was, I think, representative, about 80 per cent.

Q. 80 per cent of the coal you sold went out of Arkansas?

A. Yes, sir.

2315 Q. Now, the Bache-Denman business, as it existed at the end of 1913, was that a spot business? Do you understand that word, what we call "spot"? I think you call it "current" business. Was it current business or was it on an annual contract basis, or both, and describe it in that connection briefly?

A. Well, I will say that about one-half of their tonnage was sold on annual contracts, and about one-half on current orders, standing orders.

Q. What do you mean by "current orders"?

A. Orders that were placed to be shipped as soon as they can be shipped.

Q. State whether or not the Bache-Denman coal has a special good will on the market, and if so, describe what it was.

A. Well, it had a special line of customers, if that is what you mean by good will.

Q. Who asked for that particular kind of coal?

A. There were certain customers that knew the coal, and we had more or less established trade at the time. The coal was sold in the north for domestic trade under the name of Carbonita.

Q. What coal?

A. The Arkansas coal produced in Sebastian County by the Bache-Denman Company.

Q. Was that restricted to Bache-Denman coal?

A. Yes, sir.

Q. What was that used for? A. That coal?

Q. Yes.

2316 A. For domestic trade, furnace and household purposes. That was the general trade name of the coal on the market.

Q. In general, in what states or cities was that sold for that purpose?

A. In all the territory, including Kansas City, St. Joe, Omaha, Lincoln, Topeka and Wichita.

Q. Did any of it go north of that?

A. A small tonnage sometimes went to Minneapolis and St. Paul, and to northern Texas and Arkansas.

Q. Describe briefly where the Bache-Denman coal went, what markets you put it into, and with what coals it competed. We have been over that with other witnesses, so I want you to make your answer brief.

The Court: He stated what markets this Carbonita coal reached.

Q. (continuing) You need not cover Carbonita. Cover the other coals, mine run and slack and so forth.

A. That is the year 1913 you are talking about?

Q. Yes, just before the open shop.

A. I would say that about 40 per cent of their tonnage moved into the northern territory, which we call the Kansas City territory, Missouri, Kansas and Nebraska.

Q. What coals did that meet?

A. It meant all that coal that they produced, but primarily the lump or nut sizes go north, and the slack and the mine

run coal will be moved to Arkansas and Texas. I would say of the total tonnage about 40 per cent went into the northern territory, Missouri, Kansas and Nebraska, and about
2317 40 per cent to Texas, and about 20 per cent to Arkansas.

Q. What coal did that meet in competition?

A. All coals.

Q. What coal did that meet in competition in these northern markets?

A. Well, it met all other coals that were sold there, including Illinois, Pennsylvania anthracite, Kansas coal, and Iowa coal. All coal is competitive, like food is competitive. Any coal that is up there, it will compete with.

Q. The coal that went to Texas, what did that meet?

A. That met coal from Alabama, Colorado and New Mexico, and coal from Oklahoma, more than any of them.

Q. Were you familiar with the Bache mines in 1913?

A. Yes, sir.

Q. You had been through them?

A. Yes, sir. I was around the tops of them more than I was underground. I was more interested in the sale of the coal, but I have been in all of them.

Q. Now, Mr. Puterbaugh, in case of a mine in the Hartford Valley producing in 1914 say 800 tons a day, operating under a union scale, allowing but one man to work in a room, with all the other conditions then in effect under the union scale at that time, with an actual cost of $1.75 per ton, how much in your opinion could that coal have been reduced if that mine had been permitted in 1914 to run open shop, taking into consideration possible increase in daily and annual output, and possible readjustment of wages, but not a general
2318 reduction in wages?

Mr. Warrum: The defendants severally object to that question, because it calls for a conclusion, and the witness is not shown qualified to answer it.

The Court: Do you know the answer to the question?

Mr. Warrum: I would like to complete my objection, if the court please.

The Court: Proceed.

Mr. Warrum: For the further reason that the matter is not involved in the issue here, and any answer this witness might make to the question would not tend to support the contention of the plaintiffs on any issue in this case.

By the Court:

Q. You have heard that question? A. Yes, sir.
Q. Do you know the answer to it?
A. Well, I have an opinion.
Q. Of course, everybody has that; but have you had experience enough to state with reasonable certainty?
A. I have not had the experience except in contact with mines that have operated both ways.
Q. Well, taking all the experience you have had, does that enable you to answer that question with reasonable accuracy? You can answer that yes or no.
A. Will you read that again?

The Court: Let the stenographer read it.

(Question read to witness by reporter.)

By the Court:
Q. Can you answer that question?
2319 A. I think I can answer that, yes, sir.
Q. Do you think you can answer it with reasonable certainty?
A. He asked for my opinion. I have an opinion.
Q. Do you feel from your experience in life that you can answer that question with reasonable certainty?
A. Yes, sir, I think so.

The Court: All right. I will overrule the objection. Answer it.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. I think that putting two men in a room—

The Court: No, answer the question that he asked you.

By Mr. Drinker:
Q. Give the figures.
A. I would say 50 cents per ton reduction.
Q. 50 cents per ton?
A. Yes, sir. As I remember it, didn't you ask me something about the production also?
Q. No. I stated what the production was to start with.

The Court: Now, ask him another question. He has answered that question.

Mr. Drinker: Read the question again.

The Court: He has answered the question.

Mr. Drinker: He wants to know something.

The Court: I know he does, but that doesn't matter. Ask him another question.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

2320 Q. In that answer did you take into consideration the possibility of increase in both the daily and the annual output of the mine by reason of open shop?

Mr. Warrum: Defendants renew their objection.

The Court: Yes. You are now cross-examining him on his answer.

Mr. Drinker: He asked me a question. Couldn't I have the question read to him again?

The Court: I know he did. The question was read to him and he answered. I will sustain the objection.

Mr. Drinker: May I have an exception, your Honor?

The Court: Yes.

Q. Mr. Puterbaugh, if in 1914 you had been authorized by the Bache-Denman Company to sell their coal at 25 cents under the price at the time charged by their competitors, including the Central Coal & Coke Company, to what extent, if any, could or would that have resulted in an increase in the Bache-Denman out-put?

Mr. Warrum: The defendants object to that, because it is purely conjectural, and calling for a speculation on the part of the witness.

The Court: If he can answer, he may do so.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. If I had been authorized to sell their coal at 25 cents less than their competitors, we could have sold [—] they could have produced before their competitors could have sold any.

2321 Q. How much increase would that have resulted in in their output? A. About three times.

Mr. Drinker: Cross-examine.

Cross-Examination

By Mr. Warrum:

Q. You testified in the previous trial of this case, did you not? A. Yes, sir.

Q. That was in November, 1917?

A. I don't remember when it was, but I testified in the case.

Q. You were asked this question by Mr. Drinker at that time: "When did fuel oil and gas start to affect the coal markets here?" And you answered: "You mean in Arkansas, or the market in which Arkansas coal is sold?" And Mr. Drinker's question: "The market in which Arkansas coal is sold." And you then answered: "It began to affect it in 1898 or 1899. I think it was when oil was first discovered at Beaumont, Texas, and it has continuously and in a large way affected the consumption of Arkansas coal from that time up until, you might say, the last 12 months." You testified to that at that time, didn't you? A. I think so.

Q. And that is correct? A. Yes, sir.

Q. You were further asked: "What effect did it have?" And you answered: "The price of oil was so cheap that it caused—it was used by railroads and steam plants as fuel, and being a liquid fuel it could be supplied without the labor of handling, and it was preferred by the railroads, be-
2322 cause it enabled them to run their passenger trains without smoke or dirt. And roughly, I would say that oil, during the period from 1907 to 1916, was supplanting business that would have used perhaps a billion tons more of Arkansas coal and about that same amount of Oklahoma coal." You testified to that, didn't you?

A. Did you say a million tons?

Q. A billion tons. "A billion tons more of Arkansas coal and about that same amount of Oklahoma coal."

A. I think I said a million tons.

Mr. Drinker: Where is that testimony?

Mr. Warrum: Page 2059 of the record that has been continuously used by counsel on the other side.

Q. You meant a million? A. I expect so, yes. sir.

Q. In any event, what do you state now—that it affected it to the extent of about a million tons in each state?

A. You mean what do I say as to the amount it was displacing then?

Q. Yes. A. About a million tons in Arkansas.

Q. And the same in Oklahoma? A. Or more.

Q. You were further asked this question, were you not, at the time you were on the witness stand at the former trial in November, 1917: "Has the coal business in Arkansas, the coal mining and sales, been any more or less profitable busi-

ness during the last 12 months than in the 12 months preceding 1914?" And you answered: "It has been not much
2323 more profitable business." Did you testify to that?

A. I don't remember that question and answer, but I assume they are correct.

Q. Well, state now. Does that state the facts?

A. That is several years ago, and I don't remember accurately enough.

Q. I will call your attention to this question that you were asked on cross-examination: "You handled coal produced at union mines and non-union mines?" And you answered: "We have never made any distinction or inquiry along that line." And the next question was: "They sold at the same price on the market?" And your answer was: "Yes". Did you so testify on the former trial? A. Yes, sir.

Q. And you now so testify, do you not?

A. The price at which we sell coal is fixed by the producer. If one produces coal at a lower price, but chooses to sell his coal at the market price of union mined coal, that is, of course, his privilege, and as his selling agent we sell it at the price he fixes on his coal.

Q. There is no distinction when it is on the car as to whether it is union or non-union coal? A. Certainly not.

Q. It is graded according to the quality of the coal?

A. Yes, sir.

Q. And it sells on a common market for a common price?

A. Yes, sir.

Mr. Warrum: That is all.

2324 The Court: Stand down.

Mr. Drinker: One moment.

Redirect Examination

By Mr. Drinker:

Q. Mr. Puterbaugh, is it correct that in February, 1914, the price of fuel oil had advanced to such a figure that it was no longer seriously competing with coal?

A. It was higher in 1914, yes, sir, than it had been.

Q. How much non-union coal was produced in the Arkansas field at the end of 1913 and 1914?

A. My recollection is that there were about 150,000 tons a year of the Spadra anthracite being produced in Johnson County non-union.

Q. That is all? A. That is all, yes, sir.

The Court: Stand down.

(Witness Excused.)

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FRANKLIN BACHE, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Before I forget it, Mr. Bache, do you remember in 1904 whether there was any general advance in wages throughout the country after joint conference in the Central field and this field?

A. No. There was a reduction of about 5½ per cent.

Q. All over the union country?

2325 A. All over.

Q. Do you remember the strike at Spadra in the summer of 1910? A. In a general way, I do, yes, sir.

Q. What was the issue there? A. Open shop.

Q. Now, coming back to where we left off yesterday, you testified at the close of yesterday that in 1910 you made an attempt to start open shop. After that did you sign a separate contract with Distrct 21? A. Yes, sr.

Q. State very briefly the circumstances which led to that open shop attempt and tc the signing of that contract.

A. At the joint conventions of operators and miners in 1906 and 1908, and also at meetings of the operators themselves, I had endeavored to get eliminated certain inequalities of conditions in the mine operation, especially the matter of two men in a room, which put us at a disadvantage with our competitors, but did not get anywhere with that. In 1910, after the operators and miners had met and failed to agree on a new contract, the operators then agreed between themselves that they would all of them go on the open shop basis. The miners throughout the Southwest remained on strike and the mines were shut down without any effort being made to operate them open shop or otherwise until some time in August of that year. Then I started one of my mines open shop with the result that I testified to yesterday.

Q. Did any of the others start?

A. None of the other operators made any attempt to

2326 operate open shop, and I received no support from the other operators. I learned that the other operators had started to re-open negotiations with the union, and being

offered by President Stewart of the union a contract for the operation of our mines which took care of the inequalities of which I had complained, and in which I conceded the general advance, which the union asked for, I resigned from the operators' association and immediately signed up a contract.

Q. Immediately after resigning?

A. After resigning, the same day.

Q. Is the contract which was defendants' Exhibit No. 11 in the previous record, found on pages 914 to 916, the contract to which you refer? A. Yes, sir.

Mr. Drinker: We offer it in evidence.

The Court: Very well.

(Which said contract is in the words and figures following, to-wit):

"This agreement entered into this 10th day of August, 1910, by and between the Mammoth Vein Coal Company, Kali-Inla Coal Company, Bach & Denman Coal Company, The Hartford Coal Company, The Prairie Creek Coal Mining Company and the Coronado Coal Company, parties of the first part, and the United Mine Workers of America, party of the second part, Witnesseth:

That it is agreed by and between the parties hereto, that the parties of the first part shall pay the same scale of wages under the same conditions of labor up to March 31,
2327 1912, as they paid at their respective mines during the period of two years ending March 31, 1910, with the following exceptions, to-wit:

(a) The price for mining shall be advanced three (3) cents a ton for mine run coal, and five (5) cents a ton for lump coal.

(b) The prices for day labor shall be advanced five and fifty-five hundredths (5.55) per cent.

(c) The price for yardage and dead work shall be advanced five and fifty-five hundredths (5.55) per cent.

(d) After such time as the Central Coal & Coke Company and the United Mine Workers of America reach an agreement, the operators shall have the right to work two men in each room of the mines above mentioned, viz: Prairie Creek Mines Nos. three (3) and four (4) and Mammoth Vein No. One (1) if the Central Coal & Coke Company work two men in any of the rooms in any of its mines near Huntington.

(e) Bone coal, when it appears in any of the mines, except Coronado, of the above coal companies, parties hereto, in Arkansas, shall be paid for at the rate of two (2) cents per ton for coal produced from any working place in which the bone coal may, at the time of production of such coal, exceed ten inches in thickness, otherwise bone coal not be paid for. At Coronado same rate as at Huntington. Back pay for bone coal shall be made for two months on the basis hereto agreed.

(f) In the event of a settlement being reached between the United Mine Workers and the Central Coal & Coke Company or the Rock Island Coal Mining Company, providing
2328 any different scale of wages or conditions than set forth above, the companies parties hereto shall have the right to put any of such prices or conditions into effect at its mines located in the same fields, as the companies hereto may see fit.

(g) In the event of an agreement being entered into by the Southwestern Interstate Coal Operators' Association and the United Mine Workers of America, the companies hereto shall have the right, at their option, to participate therein, if the said Southwestern Interstate Coal Operators' Association shall be willing, in which events this contract shall be cancelled.

(h) If any arbitration agreement be entered into between the Southwestern Interstate Coal Operators' Association and the United Mine Workers of America, or between any operator in District 21, and the United Mine Workers of America, then the companies hereto shall have the right, at their option, to put in effect for the settlement of any disputes that may arise between themselves and their employes or the United Mine Workers of America, the same clause, or one similar to it, with the names of the parties changed to suit the facts.

Witness our hands and seal.

MAMMOTH VEIN COAL COMPANY,
By F. Bache, President.

KALI-INLA COAL COMPANY,
By F. Bache, President.

BACHE & DENMAN COAL COMPANY
By F. Bache, President.

HARTFORD COAL COMPANY
2329 By F. Bache, President.

PRAIRIE CREEK COAL MINING COMPANY,
By F. Bache, President.

UNITED MINE WORKERS OF AMERICA,
By P. R. Stewart, President.

JAMES MULLON,
EDW. CUNNINGHAM."

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By Mr. Drinker:

Q. Mr. Bache, after you signed up, what did the other operators do? A. They signed up in two or three weeks.

Q. Now, coming to 1914, when did you determine to go open shop?

A. It is difficult to state the exact date when I reached the determination.

Q. Well, approximately when?

A. I had been thinking about it for several months before, but reached a final conclusion in March, 1914.

2330 Q. What determined you to start open shop?

A. We had been operating for a number of years with certain disadvantageous conditions which put us at a disadvantage with our competitors in the competitive market. We were forced, by competition, to sell our coal for a number of years less than it cost us to produce.

Q. How much less?

A. From 5,—on an average from 5 to 10 cents a ton less.

Q. You had been losing that much money?

A. Yes, on an average, over a period of years. The companies had a considerable indebtedness which was scattered about in various banks and individuals, mostly banks. The fact that we were losing money was a thing we made no concealment of. After these efforts that I have detailed toward getting these inequalities removed, I gave the matter pretty careful consideration. I went down to visit this open shop operator at the Spadra field and found out what he was doing down there and how he was succeeding. I made up a great many figures myself and estimates what I could gain by going open shop; planned what method I could operate the mines on, and concluded that I would make a very substantial saving in the cost of operation, and that with that substantial saving I would be able to sell my coal at a price sufficiently low to enable me to go out into the territory which we had lost, on account of the high cost of our production, and get

back business which had gone to competitive coals in Colorado, Alabama and elsewhere in the non-union districts, and we could back from some of the railroads contracts for
2331 coal which they had quit buying, because of the high cost of the coal.

Mr. Warrum: Now, if the court please, this is not an answer to the question, this is an argument or thesis by the witness.

The Court: Yes, confine it as much as possible.

To which action and ruling of the court, the defendants and each of them at the time duly excepted and still except.

Q. Yes, we will.

A. We expected to reduce our cost to such a point that we could go out in the market and reduce our price and increase our tonnage and make some money.

Q. What did you do in preparation for your open shop operations; did you consult your attorneys?

A. Yes, sir.

Q. Who were your attorneys?

A. Reed & McDonough.

Q. This is Mr. McDonough sitting here?

A. Yes, sir.

Q. And his partner, Judge Reed, who is now deceased?

A. Yes, sir.

Q. In what connection did you consult them?

Mr. Warrum: What difference does it make?

Mr. Drinker: I want to find out why he operated his companies in the manner he did.

Mr. Warrum: It is certain it could not be a legal proposition, unless it was some sort of a scheme.

The Court: Never mind. Proceed.

2332 Q. Had you had previous experience with an attempt to operate open shop, other than the experience you had in 1910?

A. Yes, sir.

Q. Where? A. In Oklahoma.

Q. And without going into detail on that, were you able to operate there?

A. We did, successfully.

Q. By reason of what circumstances?

A. Protection afforded by the United States courts, in the way of deputy marshals.

Q. Federal Courts? A. Yes, sir.
Q. What was the condition at that time of the Department of Justice, and the state officers in Sebastian County, relative to Union sympathy?

Mr. Warrum: The defendants separately object to this question, and to the witness giving his opinion as to the status, morale, political or otherwise of the state and government officials.

The Court: Oh, I think so.

Mr. Drinker: I want to show why it was that he arranged matters so as to get the protection of the federal courts, and why his companies were operated the way they were. I want to show that he consulted his attorneys about that, and they told him how to do it, and he did it.

The Court: All right, but let's make it short.

2333 To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: I am trying to make it short but with this witness we have to straighten these things out.

Q. Did you,—

The Court: Do you withdraw that question?

Mr. Drinker: No, your Honor, I wish to press that question.

The Court: You were about to ask another.

Mr. Drinker: I will withdraw the last question, and ask the first one.

Mr. Warrum: We renew our objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

A. I knew we would get no protection whatever.
Q. Did you call that condition to the attention of your attorneys and ask their advice as to how it would be legally possible to obtain protection of the Federal Court, and if you did state the substance of that conversation?

Mr. Warrum: The defendants separately renew their objection, and for the reason that it is self serving; he may have

been laying some plan that we know nothing about and that is a statement to his attorney and would not be binding on us.

Mr. Drinker: I admit that he was laying plans to protect himself.

The Court: Oh, let him answer.

To which action and ruling of the court the defendants
2334 and each of them at the time duly excepted and still except.

A. They told me I could apply for an injunction if any trouble took place, if the companies applying for the injunction were foreign corporation.

Q. What do you mean by foreign corporations?

A. Companies incorporated in some state other than Arkansas.

Q. What company did you intend to start your operation at? A. Prairie Creek No. 4.

Q. What state was that company operating that mine incorporated in? A. Arkansas.

Q. What did you do in pursuance of Judge Reed's advice?

A. I made an operating lease between the Prairie Creek and the Mammoth Vein Coal Mining Company.

Q. What state was the Mammoth Vein Coal Mining Company incorporated in? A. West Virginia.

Q. What company operated the property during this trouble? A. The Mammoth Vein Coal Mining Company.

Q. That company subsequently applied for and secured the federal protection of the United States Marshals?

A. Yes, sir, the Mammoth Vein Coal Mining Company.

Q. What states were the Coronado and Hartford Coal Companies incorporated in?

A. The Coronado Coal Company was a West Virginia corporation, and the Hartford Coal Company was an Oklahoma corporation.

Q. Did you make any lease of those properties to the
2335 Mammoth Vein Coal Mining Company?

A. I did not.

Q. You say you leased the property of the Mammoth Vein Coal Company, to the Mammoth Vein Coal Mining Company?

A. I didn't say so, but I did lease it.

Q. What state was the Mammoth Vein Coal Company incorporated in? A. Arkansas.

Q. What experience of yours, or information other than what you have detailed led you to anticipate trouble, or other-

wise, in connection with your open shop operations, very briefly?

A. The experience at our own mine in 1910 and the experience of the operator at Spadra, and my general knowledge of the effect of open shop operation, the violence that invariably resulted from open shop operation, attempts at open shop operation.

Q. Did you attempt to hire men to go to this open shop operation? A. Yes, sir.

Q. Did they ask for protection?

A. Yes, sir.

Q. How many of them?

A. Three or four of them.

Q. What did you do in connection with getting protection for the men before such time as you would start operating?

A. I got a man named Barnes from the Burns Detective Agency to come down here,—

Q. He is the man whose testimony was read?

A. Yes, sir. He had been chief of police at some town up in Minnesota, and he came down here with two or three
2336 men under him, to go out to the mine and afford such feeling of security as their presence might bring.

Q. In hiring the men, what did you tell them relative to the kind of relations that were to exist with the union? That is, whether it was to be union or open shop?

A. I told the men that were going to work for us, the miners, that we were going to operate open shop.

Q. What did you announce to the men who were already working for you there, as to whether they would be taken into your employ, if they wished to go in?

A. I announced we would take every man that had worked for us, all the union men into our employ on that basis, open shop.

Q. What company houses did you have down there?

A. We had fifty or a hundred in the two camps, Nos. 3 and 4.

Q. Where was No. 3 camp with reference to the property that you were going to start open shop?

A. Where is that big map?

Q. Where is that big raised map,—can you get it in here?

A. Shall I answer the question?

Q. Yes? A. No. 3 camp lay to the southeast.

Q. How far away?

A. Oh, a quarter of a mile southeast of No. 4, this mine here.

Q. And where was No. 4 camp?

A. Number 4 camp lay about three quarters of a mile northwest.

Q. Was that camp Beulah or Frogtown?

A. No, sir, Frogtown is another place altogether.

2337 Q. No. 3 and 4 Prairie Creek were operated together as one mine at this time, were they?

A. Yes, sir.

Q. How?

A. They were connected under ground, and all of the coal from No. 3 was hauled through the development work, the narrow work to the bottom of that shaft, and hoisted out through there.

Q. Was No. 3 a slope or shaft mine? A. A slope.

Q. That was not being used?

A. Not for hoisting coal to the surface, but to allow coal to go to the bottom of the shaft, and from there we hoisted it up. The slope was being used in that way.

Q. Did you do anything relative to getting the use of your houses at No. 3 camp, and if so what?

A. I sent out notices to the men occupying houses, advising them that we wanted possession of the houses.

Q. Which houses? A. Some of them at No. 3.

Q. Go on?

A. And telling them that we had vacant houses near Midland, about four or five miles away and they could move up there at our expense, and could live in those houses at Midland free of rent, and if anyone was sick they could stay where they were until they got well.

Q. Was there any time during this trouble when your former employees, union miners, were evicted from their

2338 houses and compelled to live in tents?

A. Not once.

Q. Not one miner? A. No, sir.

Q. My colleague suggests that the jury might wish to understand what a tipple is in connection with your testimony. Will you briefly explain what it is? Is this a tipple (indicating a photograph)?

A. That is one.

Q. What might be called a tipple, just briefly?

A. That one is covered up there. The mouth of the slope is here, and the coal vein dips down this way, and here is a wire rope, and a lot of pit cars or mine cars, and they are loaded in the mine and pass onto that wire rope, and are pulled to this incline up to about here, where these cars are standing and after they are pulled up there, they drop down here

on this level, to this point here (indicating). There are two cars there now, and onto the tipple proper, and then the cars are run onto a little business to tip them over,—that is the reason for the name, tipple, and as they go over the screen and into the railroad car, which you see one or two standing there. This is a slop tipple, and this is a shaft tipple (indicating). Then in a shaft tipple we hoist the coal straight up in cages by a wire rope, or what we call a cable. That particular mine is about 250 feet to the coal, and of course the coal is loaded into an elevator, or cage, and hoisted up to about this point here, where they are dumped out, the coal is
2339 dumped out, and then the coal runs down onto the screen.

Mr. McDonough: Dumped out of the pit cars?

A. The loaded up cars are hoisted up to about here, and dumped, and the coal from out of these pit cars goes down on the screen, and is divided into different sizes and then into the railroad cars.

By Mr. Drinker:

Q. Do you know how many men you hired as guards at this time?

A. In addition to those I have already testified to, we got three or four more.

Q. Were they professional guards?

A. They were local men.

Q. You mean Mr. McLaughlin that testified?

A. Yes, sir, Arkansas man.

Q. And Jake Ritchie? A. Yes, sir.

Q. Do you know how many men you hired at that time that were coal diggers?

A. I don't think that we had any that were not coal diggers, except the men that the Burns man brought down with him, and Mr. McLaughlin, he was not a coal digger. The rest were mine workers.

Q. Do you know that Mr. McLaughlin had not dug coal?

A. I don't remember that he did.

Q. Did you purchase any guns? A. Yes, sir.

Q. How many?

2340 A. I think we purchased five rifles.

Q. At that time? A. Yes, sir.

Q. And some ammunition for them? A. Yes, sir.

Q. Do you know subsequently how many guns you purchased altogether, during the whole time?

A. Fifty or sixty.

Q. Rifles? A. They were, I think, all rifles.

Q. Do you know when you got them?

A. We got them along at different times; I think we probably got some for the Federal marshals, my impression is.

Q. How many Federal marshals were the most you ever had down there?

A. Forty is my recollection, is the largest number we had there.

Q. That was along in the middle of June?

A. Yes, sir. I would like to refresh my memory a little bit about the arming of the marshals, whether they were armed by the court, or whether we furnished them or not.

Q. You mean after you go back to the office at noon?

A. Yes, sir.

Q. All right, I will ask you about that later. What did you do at the mine in preparation?

A. The first thing I did was to order as much inflammable material to be removed, or torn out from about the vital spots, the hoisting engine, and things of that kind, and
2341 then we cleaned out a couple of houses that we had, buildings that we had put up near the tipple, in order to use them for the men to sleep in and eat in. Then, I had an old hoisting cable, like you see fastened on those cars there, stretched around the tipple, including an area, I would say, of about three acres. We stretched it around, fastening it to trees, fences, posts, or stumps, or anything at all, and put signs up telling none but employees admitted, or something of that sort along the road. Then we put up poles with electric lights on them with the light shining out, but not in, a half dozen such poles, I imagine.

Q. That wire did not have electricity running through it?

A. Oh, no.

Q. Did that go all around the mine, or only connect up with something?

A. I think it connected up,—I don't think it went all the way around, I think it connected up with some fencing, and fastened to the mine office at one side. It is too far back, I can't remember exactly.

Q. When did you actually start open shop?

A. We started hoisting coal open shop on Saturday, April 4th.

Q. Before that, did you receive a visit from President Stewart? A. Yes, sir.

Q. Where? A. In my office at Ft. Smith.

Q. How long before that? A. A few days.

Q. A few days before April 4th?

2342 A. Yes, sir, and the latter half of March, or the first three days of April.

Q. Just state briefly the substance of the conversation, giving the language as well as you remember it, and where you cannot the substance?

A. In substance he said he heard that we were going to run open shop, and asked what my grievance was. I told him that the contract had repeatedly been broken by the miners, by the union, and that I had just ascertained that large sums of money had been paid by some of the operators in order to procure the contract that was then in existence. He remarked that he would like to get the thing fixed, and I said, "Well, I tried to get the inequalities worked out before, and you agreed to eliminate them, but you broke that contract, and I am not disposed to believe you would carry out what you would promise."

Q. What did you refer to then?

A. To cutting out those inequalities.

Q. When you told him that he had broken the contract, what did you refer to then?

A. I referred to the contract made in 1910.

Q. The one we put in evidence this morning?

A. Yes, sir.

Q. Did the union permit you to work two men in a room under that contract?

A. They had gone flat back on the contract and refused to let us work two men in a room.

Q. Go on with the conversation?

2343 A. I said that I did not have much confidence in promises, and he said he thought I was making a great mistake, that I would have the whole force of the union against me, and then I remarked that the open shop operator down at Spadra seemed to be getting along pretty well, and he said he would not last very long, that the coal was so thin it didn't make much difference anyway.

Q. Did he comment on your statement about the breaches of the contract?

A. He deplored the breaches of the contract in a general way, and said they were local strikes. As to the particular breach that I complained of, for which he himself was responsible, he did not make any reply.

Q. Do you remember anything else that was said at that time? A. No, sir, that is about all that I remember.

Q. How long was he there?

A. Oh, he was there off and on,—he was there for fifteen minutes perhaps, something of that kind. It is hard to recollect the period of time of a conversation.

Q. Well, when did you go down to the mines this time,—were you down there April 4th?

A. I went down there on Friday afternoon, April 3rd, as we expected to hoist coal the next day.

Q. What happened on the 4th of April when you were there? A. We hoisted coal, open shop.

Q. Did Slankard come down there?

2344 A. Oh, yes, a man came up to the rope that was stretched around and somebody come and told me he wanted to see me. I went over there, and this man that we called chief guard, Barnes, was there, and the man at the rope said his name was Slankard. I don't think I had ever seen him. If I had I did not recognize him, and he said he was constable or officer of the peace at Hartford, and he wanted to know how we were getting along, and a little conversation, and hoped there would be no violence, and I said I hoped so too, that all we wanted was to be left alone, and I suggested to him that we would be very glad, if he was an officer of the peace, if he would come out and stay with us. That was the substance of the conversation.

Q. And then did you go back to Ft. Smith?

A. I went back to Ft. Smith on Saturday night, the 4th.

Q. What did you know about the riot of April 6th?

A. I was in my office at Ft. Smith, and the telephone rang, I answered it, and the superintendent down there reported that they had come in [one] them and were all over the place and wanted to know if he should give up and quit; he said there was violence, and they were afraid and I said, "Ye".

Q. And then did you see the men when they came back, the men that got hurt? A. Yes, sir.

Q. Visit them in the hospital,—never mind that, just answer the other question?

A. Yes, sir, I visited them in the hospital.

Q. Then you applied for a temporary injunction?

A. Yes, sir.

2345 Q. Who did that?

A. Judge Reed went down to Little Rock with me, I think on Wednesday of that week.

Q. That was April the 8th? A. Yes, sir.

Q. And Judge Trebor granted the temporary injunction?

A. Yes, sir, on April the 8th or 9th or 10th.

Mr. Drinker: Will you get that Mr. Hardin?

Q. What was Coronado doing at that time?

A. It was operating,—it was not operating on April 6th. It had not started open shop, or no attempt had been made to start it open shop, and the union men were still over there.

Q. When did it operate,—did it operate in April?

A. I think the men cleaned up, as they called it, ran a day or two after April 6th to load up what coal they had broken down in the rooms, and got paid for it, and never worked any more while we were on strike.

Q. Did they go out on strike? A. Yes, sir.

Q. Do you know why? Had they any grievance about their work at Coronado? A. I had not heard of any.

Q. Do you know why they went out?

A. Because the other mines, the other Bache-Denman mines, or this particular Bache-Denman mine was on strike working open shop.

Q. That was a sympathetic strike, so-called?

A. I don't know what they called it, they did not work.

2346 Q. When was the next time you went down to the mines?

A. I cannot give you from week to week, or day to day; I went down, I was up and down off and on, until a few days before they were finally destroyed on July 17th.

Q. Were you there in May,—I just want to know what the condition of the mine was in this interval?

A. Yes, sir, I went down in May.

Q. What did you find?

A. I found the mine abandoned, nothing doing and the pump not operating and the water filling the mine.

Q. Describe why the water filled the mine, and how it does, very briefly.

A. This particular mine which I said was a shaft mine, the shaft is about 250 odd feet deep and the bottom of the shaft is the lowest part in the mine, and naturally all the water made in the mine runs down to the bottom of the shaft.

Q. There are springs all through a coal mine?

A. Not exactly springs, but water leaks in from the roof and comes in from the surface, and in various ways.

Q. About how much water do you have to pump out of a mine, like Prairie Creek No. 4, a day?

A. About 200 gallons a minute.

Q. Day and night?

A. That depends on how much rain there is outside, and various things.

Q. What did you find when you were there in May, how full was it of water?

2347 A. The water had come up quite a ways,—I don't recall how many feet, but quite a ways. The water in a mine, when it raises, it not only fills the shaft, but it has to go out and fill the workings before, and it takes quite a while to fill the shaft.

Q. And when the water gets up so high you cannot dig any more coal?

A. The trouble here was that the pump was at the lowest place, and the water got over the pump.

Q. How did you get the water out?

A. We manufactured some boxes, or tubs, say about 6 feet square and high, called water boxes, and put them on the cages and hoisted the water upon down like we do coal. We let them down on the cage or the elevator, and let them fill with water and then would pull it up and dump it out; they would hold about 2,000 gallons apiece. Then the next one would come up and we would dump it out, and we did that until we got to the pump, and then we turned the steam on, and ran the pump.

Q. That was being done in May?

A. Yes, sir.

Q. Did you go down there about the tenth of July, about a week before the battle? A. Yes, sir.

Q. What did you find then?

A. They were just about getting the water finally out, there had been a good deal of difficulty in getting the water out and a great deal of delays and accidents and trouble in getting these boxes to hoist the water up. We found
2348 broken timber in the shaft. In letting the cages down we could not let them all of the way down and we had to go down and work in the water and get those timbers out so that the cages could go down and get the water, but when I was down there, I went down to lend every effort possible in getting the water out so that we could go to shipping coal as quick as possible. I stayed there until about the 12th or 13th. I think I was down there two or three days and nights, and then I came up here and went to New York or Philadelphia, and was there,—

Q. I want to go back first, and get the question of securing the United States marshals. Just go over that briefly from the beginning, as to what United States marshals were sent down from time to time.

A. The order making the injunction permanent provided,—

Q. When was that?

A. I think on May 8th, when the injunction was made permanent.

Q. On the 8th of April the temporary injunction had been ordered, providing for a full hearing later?

A. Yes, sir.

Q. And it was made permanent on the 8th of May?

A. Yes, sir.

Q. Did you have Federal marshals before that?

A. No, sir, nothing at all in the way of protection.

Q. Your guards were there?

A. They were driven off on the 6th of April, and no one there until the marshals went down. The order provided for marshals, and there was a long delay even then, in
2349 getting the marshals sent down, something between the marshal's office and the judge's office, that I don't know about. Finally 40 marshals, to the best of my recollection, were sent down there in two or three groups. Then there was 40 marshals stayed there for some days or weeks. Then all of them were withdrawn by orders from Washington, and I went down to Washing,—

Q. When did you go?

A. After those 40 marshals were withdrawn.

Q. When was that, do you know?

A. I dont' know.

Q. In June some time?

A. I am not confident.

Q. Who went with you?

A. Mr. McDonough went down with me.

Q. Who did you see?

A. The Attorney General and Solicitor General, and several other people and they finally said they would send three marshals back, but they were not to go on the property, and the three marshals went down there, and nobody would give them any place to stay and they had to go on the property.

Q. What do you mean, nobody would give them any place to stay?

A. None of the miners or sympathizers in the neighborhood would give them a place to sleep.

Q. And they did go on the property?

A. We provided tents for them, and they slept close to the tipple.

Q. How long did they stay?

A. Until a few days before the mine was burned, and
2350 they were taken off.

Q. Marshal Mayes was taken off?

A. Yes, sir, there was a change.

Q. And the deputies were taken off, and there were no marshals there at the time of the battle?
A. That is it.
Q. I hand you a paper marked Exhibit 40 in the other record which I will get the original of and have marked in a minute, dated May 25th, and ask you what this is?
A. May 23rd.
Q. May 23rd, yes.
A. It is a letter from me to the United States marshals of the Western District,—

Mr. Warrum: The defendants object to this as a self-serving letter, written by the President of the plaintiff companies. May 23rd, 1914.

Mr. Drinker: It is all part of the res gestae, to the marshal, telling him what to do and what to expect down there.

The Court: I know, but I am afraid it is self-serving.

Mr. Drinker: Does your Honor refuse it?

The Court: I think so.

Mr. Drinker: Will your Honor grant me an exception?

The Court: Yes, sir.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. I hand you a paper marked Exhibit 41 in the old record, dated May 23rd, 1914, and ask you what that is?
A. A letter from me to John S. Cameron, superintend-
2351 ent of the mines at Midland, Arkansas.
Q. Did that have anything to do with the letter to the marshal, Exhibit 40, have any connection with it?
A. Yes, sir.
Q. Don't say what was in either of them, but what connection?
A. I have to read it to give it to you accurately.
Q. Don't read it out loud?
A. The letter to Mr. Cameron, the copy of the letter to Mr. Cameron,—I don't know how to say it.
Q. Go on?
A. A copy of the letter to Mr. Cameron was enclosed in the letter to the Federal marshal.

Mr. Drinker: I offer this letter,—

Mr. Warrum: This purports to be a letter written by the President of one of the plaintiff companies to John S. Cam-

eron, his own superintendent, of mines, May 23rd, 1914, and is selfserving and intended to be, and is incompetent.

Mr. Drinker: It was inclosed in a letter to the marshal.

The Court: I understand, still we are hearing one side of this controversy, which of course would be expected to be not altogether impartial. Overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

(The papers referred to were marked by the reporter Exhibits 22 and 23, and are in words and figures following
2352 to-wit):

Exhibit No. 22.

"United States Marshal, May 23, 1914.
Western District Arkansas,
Fort Smith, Ark.

Dear Sir:

The Mammoth Vein Coal Mining Company expects, in the course of a few days, to ship coal from its mines #4, near Prairie Creek, Arkansas. The United States Court for the District of Arkansas granted a Perpetual Restraining Order against certain named parties and others, restraining them from interfering with the operation of the Company's business.

The order provided for the stationing of possemen at the mine, in case it was deemed necessary for enforcing the decree of the Court.

As you know, there was disorder at the mine, resulting in the severe beating of four men, previous to the granting of the Temporary Restraing Order, and since that time, many threats have been made and at least one man was attacked, as testified at the hearing for the Perpetual Restraining Order.

I am advised that it is not the purpose of the Union men, opposed to the operation of the mine on the open shop plan, to create any serious disorder so long as the Company is confining itself, as it is at present, in spending money in pumping out the mine; but that as soon as they commence to ship coal, an attempt will be made to stop the operation of the mine.

This is a matter of common belief and could be testified to by a large number of parties. I, therefore, believe it will
2353 be desirable to place deputy marshals at the property for the purpose of preventing disorder.

I have instructed the employees of the Company that they were not to create or initiate any disorder and were not to resort to the use of firearms, except to protect their lives or the lives of others.

And I am confident that if you would place a few possemen at the mine that the Union men will not make any serious disturbance, and I am equally confident that if you do not, that they will make a disturbance, believing as they probably will, however erroneously, that the lack of possemen, is for the purpose of permitting them to do damage to persons and property, and thereby prevent the operation of the mine as an open shop mine.

This is the only way it can be prevented as there are a considerable number of men, who wish to work "open shop" and will do so unless violence is attempted, which would be a violation of the Court's decree.

I am sure the employment of a few possemen at the mine now will prevent an outbreak of any disorder or violation of the Court's decree and am equally certain that there will be a violation of the Court's decree and violation on the part of the Union men or their sympathizers, unless possemen are placed at the mine on or before the time of our shipping coal.

And that once violence has started, it will require the continued employment of large numbers of possemen to prevent the continued violation of the Restraining Order; in other words, a little precaution now will save a great deal of
2354 trouble later.

I herewith enclose copy of letter, written by MR to Mr. John Cameron, Superintendent of Mines, embodying my directions to the peaceful behavior of employees of the company.

This letter to Mr. Cameron is superfluous as it is very unlikely that the 30 or less men at the mine would deliberately initiate violence with one or two thousand union men on the other side; but I am impelled to give these instructions in writing and at the same time write you, in order to place the company on record before any violence is committed, which violence I am certain will be committed by the Union men and their sympathizers unless possemen are placed at the mine when we commence to load the coal.

Very truly yours,

FB/EB
enc."

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"Exhibit No. 23.

Mr. John S. Cameron,
Superintendent Mines,
Midland, Ark.

Dear Sir:

I wish to reiterate in writing what I have heretofore said verbally that under no circumstances are employees of this Company to use any violence towards members of the Union or their sympathizers or other parties, except in defense of their lives or the lives of others with them.

All parties are restrained by the United States Court from interfering with the operation of our property and it is
2355 most highly desirable that we so conduct ourselves and direct our employees that in case of any violence it can be clearly shown that it was not initiated by us.

I am aware that it is absurd to anticipate that the 30 or less men employed by us are going to deliberately initiate violence with two thousand or more men in the Union but if any violence does result from our "open shop" operations, we know that the union men will endeavor, through the Press and otherwise, to give the impression that we or our employees started it.

For the above reasons, I wish you would impress upon each and every employee that they must not start any violence and their only excuse for violence will be to protect their own persons or lives or the persons and lives of others.

Very truly yours,

FB/EB"

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Mr. Drinker: Mr. Bache, did you have any difficulty in securing men to work down there in that open shop mine? If you did, when did you and when did you not?

A. A little difficulty at the outset when they were afraid, but after we got some protection,—

Q. What do you mean by "some protection"?

A. The marshals, we had absolutely no difficulty whatever, we were overwhelmed with application for work.

Q. Did you have men down there who could not dig coal? Have more men than you could use?

A. We had more men there than we could use until
2356 we got the water out and were ready to dig coal.

Q. What do you know personally about the battle,—you were not down there? A. I was not there.

Q. You just heard,—
A. I just heard that the properties had been destroyed.
Q. When was the first you heard of it?
A. I saw it in the newspaper.
Q. Next morning? A. The next morning.
Q. And the men came up here from every direction?
A. I was not here, I was in the east.
Q. Where were you? A. I was in Philadelphia.
Q. You came back?
A. I came right back and got here and found the office over here in the Merchants Bank Building pretty well filled up with men that had brought their belongings, setting around the office, and wanted to know what to do, and I wrote out to some open shop operators in the West,—
Q. And you got them jobs?
A. I got them jobs out west, and paid them off, and got their fare advanced most of them, to go elsewhere.
Q. You were appointed receiver of all of the properties on the 25th of July? A. Yes, sir.
Q. Did you make any further attempt to operate the mines?
2357 A. Yes, sir.
Q. When was that?
A. I made an attempt in October, after we got some marshals again.
Q. With what result?
A. The marshals and the men and everybody were driven off in another small battle.
Q. Then what did you do?
A. Well, we continued to try to rehabilitate them, and get some coal out from little out croppings, what we call pigeon holes. The big mines were destroyed.
Q. You did not attempt to operate any of the mines in October?
A. No, sir, we could not, they were destroyed.
Q. Just to scrape it up?
A. What we call little pigeon holes, along the outcrop, we got out a few tons and in January the lease that we had made to the Central Coal & Coke Mining Company of the Hoffman mine,—
Q. Before January you applied for further protection did you?
A. Yes, sir. And the government sent troops down here, four troops of calvary.
Q. They camped down there? A. Yes, sir.
Q. How long were they there? A. Several months.

Q. In January?
A. In January the lease of the mine we owned the Hoffman mine, the lease that we had made to the Central
2358 Coal & Coke Company expired, and we were to come into possession of that mine. That had not been destroyed and with the protection of the cavalry, we were going to start that, but the cavalry was withdrawn and the court declared the company bankrupt and told us to stop trying to rehabilitate things, and we threw up our hands and quit fighting.

Mr. Drinker: Cross-examine.

Cross-Examination

By Mr. Warrum:
Q. Mr. Bache, you had quite a number of companies, of corporations organized down in this part of the country, did you? A. Yes, sir.
Q. When was the Coronado Coal Company organized?
A. I don't recall the year, in 1906 or thereabouts.
Q. Who were the officers of that company?
A. I don't remember, I think I was the president when it was organized, but I am not certain.
Q. Who was interested with you in those companies?
A. Various people.

Mr. Drinker: I don't see what that has to do with it, who was interested, who the stockholders were?

The Court: Let him answer.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. Mr. Heber Denman was your associate in the organization and formation of these companies?
A. He was a stockholder.
2359 Q. Was he an officer?
A. He was Vice-President in most of the companies.
Q. Now, the Bache-Denman Coal Company was what you called the holding company is that right,—you so termed it at the last trial? A. It held the stocks.
Q. It held the stocks of the other companies?
A. Some of them.
Q. Mr. Denman had 40 per cent. of that stock, did he?
A. I don't recall his exact proportion.
Q. Approximately I am correct, am I not?
A. I think that is about right.

Q. Now, you say the Coronado Coal Company was organized in 1906? A. No, I said about that.

Q. When was the Denman Coal Company organized?

A. I think that was earlier than that, possibly about 1903.

Q. Were you an officer in that company?

A. Yes, sir.

Q. President?

A. I don't know. I think Mr. Denman was president of that company.

Q. And you were some other officer and director?

A. Yes, sir.

Q. And the stock of that company was held by the Bache-Denman Coal Company? A. Yes, sir.

Q. Now, the Mammoth Vein Coal Company, do you
2360 remember when that was organized?

A. About 1905, maybe, I would have to look that up. They were all organized along about that time.

Q. The stock of that company was held by the Bache-Denman Coal Company?

A. Some of it was, I think 70 per cent. to be accurate.

Q. Who held the rest of it?

A. Mr. Clif Speer and Mr. Echols of this city.

Q. Did you hold some of it?

A. I think the stock I had was held by the Bache-Denman Coal Company, the holding company.

Q. How much of the stock did you have before you turned it over to the Bache-Denman Company?

A. I don't know. I think it was organized and turned over at once, I am not certain about that.

Q. Did Mr. Denman have any interest in that?

A. Yes, sir, in all of these companies.

Q. And you were interested together and your stock was turned over to the Bache-Denman Company, the holding company? A. Yes, sir.

Q. How about the Hartford Coal Company, when was that organized? A. That must have been about 1901 or 1902.

Q. You were the president of that company?

A. Yes, sir.

Q. And Mr. Denman was an officer of that company?

A. Very likely.

Q. The stock of that company was held by the
2361 Bache-Denman Company?

A. Some of it was.

Q. Most of it was, was it not?

A. I don't think most of it was, Mr. Warrum. In that company there was a Mr. Jim Elliott, had one third of it, and

Mr. Bryan had one third and I think we only had one third. Later we [we] bought Mr. Elliott's or Mr. Bryan's stock, and I don't think we had more than two thirds of that.

Q. Now, the Sebastian Coal Company, when was that organized, the Sebastian County Coal Company?

A. About 1906 or 1907.

Q. And you were president of that company?

A. Yes, sir.

Q. What position did Mr. Denman hold?

A. I don't know that he held any.

Q. Was he interested in that company?

A. I don't think he was.

Q. Who held the stock of that company?

A. Originally I think I held the stock of that company.

Q. Did the Bache-Denman Coal Company hold it, in January, 1914?

A. I think that is one of the companies that is an exception, I don't think it did; I would have to look it up.

Q. We will pass on. The Mammoth Vein Coal Mining Company, who held the majority of the stock of that company?

A. There was only a hundred shares of that.

Q. I will pass that just for the moment. That was a hundred share corporation?

2362 A. Yes, sir.

Mr. Drinker: I would like for him to let the witness answer the questions that are asked.

Mr. Warrum: And I would like to ask these questions my own way. As I understand an attorney can withdraw a question and pass on.

Q. Now, the Mammoth Vein Royalty Company, when was that organized?

A. About the same, after the Mammoth Vein Coal Company was organized, but exactly the year I can't say.

Q. Who held the stock in that company?

A. Mr. Speer and Mr. Echols had some of it, and the Bache-Denman Company held, I think, the rest of it.

Q. The majority stock of the company? A. Yes, sir.

Q. Prairie Creek Coal Mining Company, do you remember when that was organized?

A. Not exactly, but about 1905 or 1906, all about that time.

Q. You were president of that company? A. Yes, sir.

Q. And Mr. Denman was directing officer of that company? A. Yes, sir.

Q. And the stock was held by the Bache-Denman Coal Company? A. Yes, sir.

Q. Now, you joined the Operators Association in 1903, I believe you said?

A. Well, to be accurate, I never joined the Operators Association.

2363 Q. What you mean is, the companies that you operated belonged to the Operators Association?

A. Yes, that is exactly what I mean.

Q. But you represented them when they themselves joined the association?

A. Yes, sir, I was their representative in the association.

Q. And you were a representative of the operating companies of these plaintiffs, when they met the union miners in 1903?

A. Yes, sir, here at Ft. Smith I was, not at Pittsburg, Kansas.

Q. They met in August at Ft. Smith here, did they not?

A. Sometime in the summer of that year.

Q. You remember, don't you?

A. I don't remember whether it was August or July or June, it was in the summer of 1903.

Q. Do you remember this, that you were chairman of that joint conference? A. Yes, sir, I remember that.

Q. Now, you also participated as a member of the Operators Association, in representing your operating companies, at a conference in 1904, did you? A. Yes, sir.

Q. You were there present and helped to negotiate a wage scale, and took part in the relations between the miners and operators? A. Yes, sir.

Q. Now, the next meeting was in 1906, was it not?

A. Yes, sir, I think so.

Q. And you were present then, were you not?

2364 A. Yes, sir.

Q. Representing the plaintiff companies that were operating companies at that time?

A. Yes, sir.

Q. And you took part in the negotiations?

A. Yes, sir.

Q. And a wage scale resulted?

A. Yes, sir.

Q. And you continued to employ union miners?

A. Yes, sir.

Q. Now, in 1910,—or 1908, they had another joint conference? A. Yes, sir.
Q. Were you present?
A. Yes, sir.
Q. Representing the operating companies?
A. Yes, sir.
Q. And took part in the proceedings then?
A. More or less.
Q. A member of the Operators Association?
A. The companies were.
Q. The companies were, and they signed the wage scale agreement? A. In 1908.
Q. Now, in 1910 you went to that joint conference, didn't you? A. Yes, sir.
Q. The companies you represented were still members of the Operators Association?
A. Yes, sir.
2365 Q. And you took part in those proceedings?
A. Part of the time.
Q. Part of the time. Is this a fact, Mr. Bache, that you were on the scale committee, composed of 9 operators, known as "the Big Nine" at that conference?
A. Yes, sir, I was on a committee of nine, known as a "Committee of Nine", but not "The Big Nine".
Q. Whatever it was known, you were a member of that committee of nine operators, and met the miners to figure out a scale?
A. No, that committee of nine was formed for an opposite purpose, it was formed for the purpose of running all of the mines in the southwest open shop.
Q. You were on that committee?
A. Yes, sir.
Q. And it was understood between you that you would run open shop in the southwest?
A. Yes, sir.
Q. And you went out with an agreement of that kind, and negotiated this contract that has been put in evidence this morning? A. I did not.
Q. And you came back into the conference with your conferees that you had agreed to operate open shop with that private contract in your pocket? A. I did not.
Q. And when they discovered that fact, they expelled you from the Association?
A. I don't know whether they expelled me from the
2366 Association or not, but I got a letter stating I was expelled.

Q. And that was the cause, was it not?
A. I don't know.
Q. It is a fact that you had an agreement between these operators that you would not sign a scale with the Union?
A. No, sir, we had an agreement that they and I and all the rest would operate open shop, and I was the only one that operated open shop.
Q. But you did sign a contract without consulting them, with the union, for the next two years?
A. Not until I had resigned from the operators asssociation, and after I had started open shop, and after the other operators had started to negotiate.
Q. You were expelled from the operators association because you signed that agreement?
A. I presume that I was.
Q. Now, you applied for readmission to the operators association two years later?
A. They asked me to come back.
Q. They asked you to come back, and you, in accordance with their invitation, applied for membership, or reinstatement? A. I never applied for membership.
Q. You went back?
A. Oh, yes, I went back.
Q. And you represented these plaintiff companies, these operating companies at the next conference in 1912?
A. I did not.
2367 Q. Were these companies represented at the conference of 1912? A. Yes, sir.
Q. Who represented them?
A. A man named Sweeney.
Q. Was he authorized to represent them?
A. Yes, sir, by me.
Q. You were not present, however?
A. No, sir.
Q. Any particular reason why you were not present?
A. I didn't think it would amount to anything.
Q. But you negotiated an agreement and wage scale that was constructed by them, with the union miners?
A. Our companies did.
Q. And that contract was to expire when?
A. July 14th.
Q. Now, I will ask you to look at the former record of this case at this exhibit in the former record, marked Exhibit 12, which purports to be a copy of the joint interstate agreement for District 21 of the operators and miners, Kansas City, Missouri, May 29th, 1912, for a period ending July 31st, 1914.

It is in the former record, pages 918 to 947, inclusive. Is that a copy of the agreement entered into at that time?

A. Yes, sir.

Mr. Warrum: In connection with this cross-examination I offer the contract identified by the witness.

The Court: Very well.

(The paper referred to appearing in the record of the
2368 former trial of this case, as Exhibit No. 12, and so offered in evidence, is in words and figures following, to-wit):

"Exhibit No. 12

Joint Inter-state
Agreement.

For District No. 21
of
Operators
And Miners
Adopted at Kansas City, Mo.,
May 29, 1912, for Period
Ending July 31, 1914.

The Southwestern Interstate Coal Operators' Association,
The United Mine Workers of America for District No. 21.

Joint
Interstate
Agreement
of
Operators And Miners
Adopted at Kansas City, Mo., May 29,
1912 for the Period Closing
July 31, 1914.

General Conditions.

Arbitration.

Section 1.

1. In case of any local trouble arising at any time through the failure to agree between the foreman and any em-
2369 ployes, the pit committee and foreman are empowered to adjust it; and in case of their disagreement, or failure to act within two days, it shall be immediately referred to the superintendent of the company and the District President of the U. M. W. of A. In whose district the controversy

arises, or such person as either may designate to represent him, and should they fail to agree, it shall then be referred by either party to the Commissioner of the Southwestern Interstate Coal Operators Association, and the District President of the United Mine Workers of America in whose district the question arises, or such persons as they may designate for its adjustment.

2. An Arbitration Board, to consist of the District President, in whose district the controversy arises, and the Commissioner of the Operators' Association, and Mr. John Steele shall decide all questions of dispute that are not settled under Paragraph 1 of Section 1, and the mines shall continue in operation pending final adjustment of such disputes.

If for any reason the Arbitrator above named should fail to qualify, his successor shall be appointed by the President, Treasurer and Commissioner of the Operators' Association, on the part of the Operators, and the three District Presidents of Districts 14, 21 and 25, on the part of the miners.

3. The written terms of this contract, the decisions of the Commissioner and District President, local customs as to prices and conditions of employment, that are established as being in effect at the expiration of the 1910-12 contract, cannot be changed; shall remain in effect and shall not be
2370 subject to arbitration.

4. If there should be any dispute as to whether a grievance is subject to arbitration, it shall, upon request of either side to this contract, be referred to an Appeal Board, to be composed of one miner and one operator and a third party, to be selected jointly in each district; the said Appeal Board to decide the point at issue; the miners to continue in operation pending a final decision, as provided in Paragraph 2, Section 1.

5. If either party feels that the decision rendered by the Arbitrator sets aside the written terms of the contract, or is contrary to local customs, prices or conditions of employment, or has been rendered contrary to the facts as presented to him, the aggrieved party shall have the right to appeal to the said Appeal Board herein provided, who shall, if the facts so warrant, order a re-hearing and demand the case to the Arbitrator.

6. The Arbitration Board shall meet at some convenient point in each district to settle the dispute arising in that district, and shall meet at the locality where the dispute arises, should it be deemed advisable by either side to do so.

7. That arbitrator shall be paid such reasonable compensation and expenses for his services as may be agreed upon between him and the parties hereto, such expenses to be paid jointly by District 14, 21, 25, and the Operators' Association. The miners' proportion of the Arbitrators' compensation and expenses shall be divided among Districts 14, 21 and 25 equally.

## Eight Hour Day.

### Section 2.

2371 1. For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching working places in the morning and departing from the same at night. The operator may refuse to allow any day man to work on any day on which he fails to be at his working place at the starting time.

## Penalties for Loading Impurities.

### Section 3.

1. In order to insure the production of clean and marketable coal, it is herein provided that if any miner or loader shall load with his coal, sulphur, bone, slate, black-jack or other impurities, he shall for the first offense be notified by the weighman and check-weighman on the miners' bulletin; for the second offense, he may be suspended for one day or be fined 50 cents; for the third and each subsequent offense occurring in any consecutive thirty days, he may be suspended for three days, or fined $1.00; provided, if in any case it is shown that a miner or loader maliciously or knowingly loads impurities, he shall be subject to discharge.

q. It is further agreed that if any miner or loader has been fined, suspended or discharged, and claims that an injustice has been done him, the matter shall be taken up for in-
2372 vestigation, and adjusted in the manner provided for in Section 1 of this agreement.

3. It is further agreed that all moneys collected from fines, as provided for in the foregoing paragraphs of this section, shall be deposited to the joint account of the Secretary-Treasurer of Districts 14, 21 and 25 of the U. M. W. of A. and the

Secretary-Treasurer of the Southwestern Interstate Coal Operators' Association, and disposition of said funds shall be made on the joint account of said Secretary-Treasurers.

4. It shall be the duty of the pit committee and mine foreman at the end of each day's work, to inspect the dirt loaded in coal during said day and render decision hereunder.

Hiring, Discharging and Time to Be Paid For.

Section 4.

1. The management of the mine, the direction of the working force, and the right to hire and discharge are vested exclusively in the operator, and the U. M. W. of A. shall not abridge these rights. It is not the intention of this provision to encourage the discharge of employes, or the refusal of employment to applicants, because of personal prejudice of activity in matters affecting the U. M. W. of A. If any employe shall be discharged or suspended by the management and it is claimed that an injustice has been done him, an investigation, to be conducted by the parties and in the manner set forth in Section 1, shall be taken up promptly, and if it is proven that an injustice has been done, the management shall reinstate said employe and pay him full compen-
2373 sation for the time he has been suspended and out of employment.

Note: Our understanding of Paragraph 1, Section 4, relating to discharge, is that no man shall be discharged except for sufficient cause other than personal prejudice or activity in matters relating to the United Mine Workers of America.

2. Provided, that if at the end of five days after the discharge of an employe who claims an injustice has been done him, and an investigation has not been made and a final decision reached within that time, such discharged employe will be given employment pending the final disposition of the case, except in aggravated cases.

Note: In Section 4, Paragraph 2, the word "aggravated" as used therein, shall apply to cases of neglect of duty and disobedience to instructions or orders. In all cases of discharge the foreman shall set forth plainly the cause for which the employe was discharged. It will not be sufficient to say, "This is an aggravated case"; the cause must accompany the act.

If the discharged employe be a miner the employment given under his clause will be in his regular working place, and if

a man, he will be given such employment at day work as the management elects and that he is competent to perform. If such employment takes a lower rate of wages than that at which he was employed at the time of his discharge, and the final decision of the case be in his favor, he will be paid in the final compensation and adjustment of the case at the
2374 same rate of wages he was receiving at the time he was discharged.

3. In order that no disputes will arise it is hereby agreed that the foregoing paragraph of this section shall be construed that day men shall receive the scale of wage for the work at which they were employed when suspended and miners $3.13 per day.

4. When the foreman, as provided for in Paragraph 1 of this section, directs an employe to do labor, the scale of wages being lower than his regular scale, he shall be paid the wage scale as paid for labor from which he was transferred during time employed.

## Suspension of Mining.

### Section 5.

1. In case of either local or general suspension of mining either at the expiration of this contract or otherwise, the engineers shall not suspend work, but shall, when mining is suspended, fully protect all the company's property under their care and operate fans and pumps and lower and hoist such men or supplies as may be required to protect the company's property, and any and all coal required to keep up the steam at the company's coal plant. But it is understood and agreed that the operator will not ask them to hoist any coal produced by non-union labor for sale in the market. Should the interest of the engineers be directly involved in any issue at the expiration of this contract, and any engineers cease from work, the United Mine Workers of America will provide competent men to perform the emergency work above
2375 recited at the scale price in effect at the time of the suspension, subject to any subsequent settlement. The operator, at his option, to retain only such engineers as are required, but with the understanding that all of the engineers employed at the time of the suspension shall be entitled to an equal division of the work.

2. All mines of members of the Association idle on March 31st, by reason of strikes, or idle for other causes, except for

non-payment of pay rolls, shall resume operation when condition of market justifies, without prejudice or interference.

Local Demands.

Section 6.

1. There shall be no demands made locally by either operators or employes which are in conflict with this agreement, or any District agreement, and there shall be no provisions imposed violating the same.

2. If any mine or any substantial part of a mine is laid idle or shut down in violation of this contract by any operator or any agent of any operator, such operator shall pay to the mine workers employed in said mine, which are thereby laid idle, the sum of one dollar per day for each of such mine workers for each day or part of day which said mine is so laid idle, which sum shall be added to the regular pay account of each of said mine workers and be paid him with such regular account.

3. If any mine or any substantial part of a mine is shut down or laid idle, in violation of this contract, by any local union, member or members of any local union, pit committee, check-weighman, or other or different officer or officers
2376 or committee of the U. M. W. of A., said operator may withhold for his or its own use from any fund checked off by him or it from the wages of the employes at said mine and otherwise payable by said operator to the officers of the local union having jurisdiction over the workmen at said mine, a sum equal to fifty cents per day per men for all the United Mine Workers who are so idle at said mine for each day or part of a day such mine or substantial part thereof is so shut down or laid idle.

4. Any question or disagreement as to any such shut down or the laying idle of any mine being in violation of this contract and the rights of the injured party to the indemnity or penalties hereby prescribed, shall be determined and finally settled as other disagreements are provided to be settled by Section 1 of this agreement. But no indemnity or penalty above provided shall be withheld or paid to the party entitled thereto until any disagreement concerning the same has been so finally determined; except where any mine worker leaves the employ of the company, in which case the company may deduct the penalty from such mine worker's wages before paying him, and in the event the case is not finally sustained, then any penalty so collected from such mine worker's leav-

ing the employ of the company will be remitted to the local union having jurisdiction at the mine affected, and by it paid to the parties from whom it was originally collected.

Payment of Wages.

Section 7.

1. The operators agree to pay twice a month, the dates
2377 of payment to be left as at present; and these payments are to be made at the office nearest to the mine wherein or at which the employes are employed; provided, however, that this office shall be located not more than two miles from such mine.

2. Any employe wishing to leave the service of an operator shall, upon giving the mine foreman three days' notice of his intention to do so, receive all money due him within twenty-four hours after he has left the service of an operator; provided that not more than 10 per cent. of the employes shall avail themselves of said right in any one week.

Check-off.

Section 8.

1. The operator will recognize the pit committee in the discharge of their duties, as provided for in this agreement, and agree to check off all dues, assessments, fines and initiations from all miners and mine laborers when desired. In order to protect the companies, the U. M. W. of A. agrees, when the companies so demand, to furnish a collective and continuous order authorizing the company to make such deductions. The companies agree to furnish the miners' local representatives a monthly statement showing separately the amount of dues, assessments, fines and initiations collected. In case any fine is imposed, the propriety of which is questioned, the amount of such fine shall be held by the operator until the case is taken up and a decision reached.

2. All deductions for dues, assessments, initiations and fines shall be made through the company office upon
2378 statement made by the check-weighman, or a duly authorized representative of the local union. It is understood that powder, oil and smithing shall have prior claim and not to exceed one-half of the regular initiation fee shall be collected in any one pay.

3. It is agreed that the miners may employ a check-weighman to see that coal is properly weighed and a correct record

made thereof, and when such check-weighman is employed, the companies shall furnish him a check number, and he shall credit to his number such portion of each miner's coal as he may be authorized to do by the local union.

Drivers.

Section 9.

1. Drivers shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor; their time beginning when they reach the change at which they receive empty cars—that is, the parting drivers at the shaft bottom and the inside drivers at the parting—and ending at the same places; but in no case shall a driver's time be docked while he is waiting for such cars at the points named. The inside drivers, at their option, may either walk to and from their parting, or take with them, without compensation, either loaded or empty cars to enable them, to ride. This provision, however, shall not present the inside drivers from bringing to and taking from the bottom regular trips, if so directed by the mine foreman; provided such work is done within the eight hours.

2. When the stables are located outside the mine
2379 companies agree to deliver the mules at the bottom of the shaft in the morning and relieve the drivers of the mules at the bottom of the shaft at night.

3. When the day men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine work full two hours; but after the first two hours the men shall be paid for every hour thereafter, by the hour, for each hour's work or fractional part thereof. If, for any reason, the regular work cannot be furnished the inside day laborers for a portion of the first two hours, the operators shall furnish other than the regular labor for the unexpired time.

Equal Turn.

Section 10.

1. The operator shall see that an equal turn is offered each miner and that he be given a fair chance to obtain the same. The check-weighman shall keep a turn bulletin for the turnkeeper's guidance. The drivers shall be subject to whomever the mine manager shall designate as turnkeeper in pursuance hereof.

Measurements.

Section 11.

1. It is agreed that measurements of entries, brushing, room, turning and dead work shall be made semi-monthly and payment in full shall be made for such work in the same manner as other work is paid for.

Condition of the Mine.

Section 12.

1. The company shall keep the mine in as dry condi-
2380 tion as practicable, by keeping the water oc the road and out of the working places. When a miner has to leave his working place on account of water, through the neglect of the company, they shall employ said miner doing company work when practicable, and provided that said miner is competent to do such work, or he will be given another working place until such water is taken out of his place.

Doctor.

Section 13.

1. No deduction shall be made for doctor unless such deduction is authorized by the individual employe.

Provisions for Injured.

Section 14.

1. The operator shall keep sufficient blankets, oil, bandages, etc., at each mine and provide such suitable conveyance as is available to properly convey the injured persons to their homes after an accident.

Deaths and Funerals.

Section 15.

1. In the event of an instantaneous death by accident in the mine, employes shall have the privilege of discontinuing work for the remainder of that day only; Work, at the option of the operator, shall be resumed the day following and continue thereafter. In case the operator elects to operate the mines on the day of the funeral of the deceased as above, or where death has resulted from an accident in the mine, in-
dividual employes may, at their option, absent them-
2381 selves from work, for the purpose of attending such funeral, but the purpose of attending such funeral, but not otherwise, and whether attending such funeral

or not, each member of the U. M. W. of A. employed at the mine at which the deceased member was employed, shall contribute fifty (50 cents and the operator ($25) dollars for the benefit of the family of the deceased or his legal representatives, to be collected through the office of the company. In the event that the mines are thrown idle on account of the employes' failure to report for work in the time intervening between the time of the accident and the funeral or on the day of the funeral, then the company shall not be called upon for the payment of the twenty-five ($25) dollars above referred to.

2. Except in cases of fatal accidents, as above, the mine shall in no case be thrown idle because of any death or funeral, but in case of the death of an employe of the company or member of his family, any individual miner may, at his option, absent himself from work for the purpose of attending such funeral, but not otherwise.

## Powder.

### Section 16.

1. The price of powder during the life of this contract shall be $2.00 per 25-poung keg. In Kansas the price of powder shall be $1.00 per 12-½ pound keg.

2. There shall be no other explosive than black powder used for shooting coal in the mines except upon the mutual consent of the pit boss and the mine committee, who may allow the use of other explosives in entries and slopes or places regarded as deficient and faulty.

2382

## Railroad Cars at Mines.

### Section 17.

1. When an adequate number of empty railroad cars are at the mines at the starting time in the morning to work one quarter day, and the operator has assurances from the railroad company that more cars will be placed at the mine before the empty cars already at the mine are loaded, then all employes shall go to work.

2. Whenever any operator may desire to mine and stock his coal, either in bins or on the ground, the employes shall go to work whether there are any empty railroad cars at the mine or not.

New Mines.

Section 18.

1. Where the development of a new mine is begun during the period covered by this agreement, scale of wages covering the labor at such new mine will be the same as in other mines in the neighborhood.

2. Where a mine is being developed in a new part of the field where new conditions are encountered, a scale of wages and rates will be made by the Commissioner for the Operators and the District President for the miners.

Classes of Work.

Section 19.

1. The erection of head frames, buildings, scales, machinery, railroad switches, etc., necessary for the completion of a plant to hoist coal, all being in the nature of construction work, are to be excluded from the jurisdic-
2383 tion of the U. M. W. of A. Extension repairs to and rebuilding of the same class of work shall also be included in the same, provided that any or all members of the U. M. W. of A. who may be employed at such work shall not be asked to work in conflict with the terms of this agreement.

2. It is further agreed that the reloading of coal that has been mined and unloaded on the ground shall be exempt from the jurisdiction of the U. M. W. of A.

Duties of Pit Committee.

Section 20.

1. The duties of the pit committee shall be confined to the adjustment of disputes between the pit boss and any member of the U. M. W. of A. Working in and around the mines, arising out of this agreement or any district agreement made in connection therewith, when the pit boss and said miner or mine laborer have failed to agree.

2. In case of any local trouble arising in any mine and through such failure to agree between the pit boss and any miner or mine laborer, the pit committee and the pit boss are empowered to adjust it, and in the case their disagreement it shall be referred to the superintendent of the company and the District President of the U. M. W. of A. or such person as he may designate to represent him; and should they fail to agree, shall be referred to the Commissioner of the South-

western Interstate Coal Operators Association and the District President of the U. M. W of A. for adjustment; and in all cases the mines, miners, mine laborers and parties
2384 involved must continue at work pending and investigation and adjustment, as provided for in Section 1.

2. If any day men refuse to continue at work because of a grievance which has not been taken up for adjustment in the manner provided herein, and such action shall seem likely to impede the operation of the mine, the pit committee shall immediately furnish a man or men to take such vacant place or places at the scale rate, in order that the mine may continue at work, and it shall be the duty of any member or members of the United Mine Workers who may be called upon by the pit boss or pit committee to immediately take the place or places assigned to him or them in pursuance thereof. Provided that this paragraph shall not prevent the enforcement of the other penalties herein provided for.

4. The pit committee, in the discharge of its duties, shall under no circumstances go around the mine for any cause whatever, unless called upon by the pit boss or by a miner or company man who may have a grievance that he cannot settle with the boss. Any pit committeeman who shall attempt to execute any local rule or proceedings in conflict with any provision of this contract, or any other made in pursuance hereto, shall be forthwith deposed as committeeman. The foregoing shall not be construed to prohibit the pit committee from looking after the matter of membership, dues and initiation in any proper manner.

5. Members of the pit committee employed as day men shall not leave their places of duty during working hours except by permission of the operator, or in cases involving the stoppage of the mine.

2385 Expiration.

Section 21.

1. This contract shall continue in full force and effect beginning April 1, 1912 and expiring July 31, 1914.

Contract
for
District No. 21
U. M. W. of A.
Adopted at Kansas City, Mo., May 29,
1912 for the period ending
July 31, 1914.

Prices for Mining Coal in Oklahoma.

1. Coalgate, Pittsburg, Pocahontas, Brewerville, Baker, Krebs No. 11, No. 5 and 7, Buck No. 6 Hartshorne, Halleyville, Goven, Wilburton, Lutie, Turkey Creek, Witteville, Savannah, Adamson and Red Oak, per ton for mine run coal 78 cents.

2. Alderson, Krebs No. 8, Carbon, Bache, Craig, and Dew per ton for mine run coal 83-½ cents.

3. Lehigh, mine run 78 cents per ton.

4. Bolen-Darnell, McAlester mines, mine run 78 cents per ton.

5. Samples, McAlester mines, mine run 78 cents per ton.

6. All entry, yardage, and deficient work shall be paid 1910-1912 rate plus 5.26 per cent advance, and the same rules and customs then existing in Oklahoma shall be continued in force during the life of this agreement.

Room and Pillar Scale—Midway.

In rooms, room necks and cross-cuts at Midway, the
2386 price shall be 86 cents per ton, mine run coal. Coal mined in entries and air courses, the price shall be 80 cents per ton, mine run. The price per ton of Midway shall cover all bottom taken up and the removal of top bony.

All yardage, entry and dead work at Midway, also the inside and outside day wage scale, to be paid 1910-1912 rate plus 5.26 per cent.

The price for yardage and dead work at No. 7 Krebs shall be as follows:

Where coal is three feet eight inches and under, the same yardage and dead work rates will be paid as No. 8 Krebs. Where coal is over three feet eight inches, same yardage and dead work rate will be paid as at No. 11 Krebs.

Prices on yardage and dead work paid 1910-1912 rate plus 5.26 per cent. Room cross-cuts will be paid the same as air courses where they are cut.

Scale of Prices on Cross-Bars, Dirt and Deficient Narrow Work In Room Necks at the Mines on Atoka Track, Excepting Midway.

Setting cross-bars, 37 cents, eight-foot bar. Loading dirt in cars 29-½ cents yer car. Air course yardage in rooms turned off the entry where top will not allow widening out. Where bottom is required to be taken up, entry prices shall be paid. One-half room turning price to be paid for widening out.

Prices on clod at Bolen-Darnell and Samples' mines shall be paid for at the rates prevailing 1910-1912, plus
2387 5.26 per cent.

The prices now in force at Wilburton to be as follows:

Scale of prices governing yardage at mines of Great Western Coal & Coke Company at Wilburton, Oklahoma.

For loading dirt and rock where same cannot be gobbed, 34 cents per car.

For entry work where brushing is not required, $2.49 per yard.

Where brushing is required, it shall be paid for at the rate of 56 cents for 8 inches.

Air courses shall be paid for at the rate of $2.00 per yard.

Bottom brushing shall be paid for at the rate of 56 cents per yard, where it is taken up for turning rooms.

The price of setting cross-bars shall be 31-½ cents per bar, under same conditions which have existed during past years.

Savannah Scale.

1. That the miners shall do all work ordinarily done in room work without addition compensation, with the exception of that which is already being done, viz; Battery and Wing Boards.

2. That the miners shall carry a twelve (12) foot battery in each and every room but shall have the privilege of drawing the battery four (4) feet below the lower rib of the cross-cut or break-through, after cross-cuts or break-through has been finished.

3. That the cross-cuts or break-throughs shall be made and driven as directed by the mine foreman or superintendent, and shall be paid for at the rate of $2.00 per yard.

4. That all coal shall be loaded by the miners and paid for at the rate of 78 cents per ton, mine run coal.

2388 5. The miner shall keep his working place well timbered and the traveling ways on both sides of the battery open.

6. In case a miner desires to leave the service of the company, and his place is in good working condition the company will purchase the coal in the battery, and shall pay for the same at the rate of one dollar and seventy cents ($1.70) per running yard, and the same shall be deducted from the next miner taking the room. This is in case the battery is twelve (12) feet wide.

Electric Chain Machine Scale.

Loaders for chain machines are to receive 52-½ cents per ton in all classes of working places.

Runners are to do all work now done by pick miners, except cutting coal. This includes taking up the same amount of bottom under the same conditions as apply to pick miners. Loaders are to furnish their own explosives, drill and prepare the shots.

The operator has the option of having the coal loaded on the day wage rate if he so elects, this rate to be $2.84. No loader will be employed on the day wage scale where it is practicable to employ him on the tonnage rate.

Yardage Machine Scale.

Yardage and room turning to be two-thirds of the price paid for pick yardage and room turning, one-half of which is to be paid to the loader and one-half to the machine men. Three working places will be assigned to two loaders, where possible.

Oklahoma Puncher Machine Scale.

2389 1. This includes all classes of puncher machines.

2. Cutting in all classes of working places shall be 17 cents per ton, to be divided as follows:

| | | |
|---|---|---|
| Runners, | 8.¾ | cents per ton |
| Helpers, | 8.¼ | cents per ton |
| Loaders | 50 | cents per ton |

Loaders to furnish explosives and do all other work done by a pick miner except cutting.

If the machine men cut up their coal at any time, the machine crew can load out the coal and clean up the place, the same as a loader, and check the coal out to their credit equally.

Yardage.

Yardage and room turning to be two-thirds the price paid for pick yardage and room turning; one-half of which is to be paid to the loaders and one-half to the machine men.

Henryetta Scale.

Room and Piller Mines—Shooting Coal.

Mine run coal 83-½ cents per ton, mining price to include the handling of cars between entry switch and face of room, when one man can push loaded car. When one man cannot push loaded car, driver or pusher to assist miner. Mining rate also includes the laying of track in rooms.

Entries 12 feet wide or less, including brushing 5 feet high on top of rail, and 6 feet wide, $3.00 per yard. When required to brush 6 feet high above rail and 6 feet wide, $3.24 per yard.

All air courses and break-through where cut, $2.00 per
2390 yard when not brushed.

Room turning 12 foot necks, $6.24, 6 foot necks, $3.12. Length of neck to be driven at the option of the operator.

Room and Pillar Mines—Mining.

Coal.

Prices for mining and cutting coal on both ribs shall be $1.10 per ton mine run coal. Said mining price including also the doing of all work specified in the above scale for room and pillar mines—shooting coal. Under this plant no powder shall be used. Prices and conditions for entry work and air courses, break-throughs and room turning to be the same as specified in above scale for room and pillar mines, shooting coal. Miners shall have the right to use powder in turning all rooms.

When entryman quits working place his brushing most be done to within sixteen feet of face.

No compensation will be paid for gob wall at air courses, cross-cuts, except where ordered to be built by mine foreman. Where gob wall is required to be built, the price for doing same is to be agreed upon by the mine foreman and the miners doing the work.

Miners in rooms to lay their own track. Miners in narrow work to lay temporary track, without compensation? Company to lay permanent track in narrow work.

Where draw slate falls in entries it shall be paid for at the rate of 2.7 cents per inch per running yard, for each inch in excess of 2 inches for each five feet in width except that no compensation for draw slate will be allowed for that part falling in the brushing or roadway width.

2391 Where pit boss and miner agree on price for any certain work this price shall be final, except where it conflicts with the terms of the contract.

Inside Day Wage Scale.

| | |
|---|---|
| Fire boss | $3.38 |
| Timbermen | 2.84 |
| Track layers, | 2.84 |
| Track layers' helpers | 2.62 |
| Trappers | 1.25 |
| Bottom cakers, | 2.84 |
| Drivers | 2.84 |
| Trip riders | 2.84 |
| Pushers | 2.84 |
| Water haulers and machine haulers, | 2.84 |
| All other inside day labor | 2.62 |
| Spragging, coupling and greasing, when done by boys, | 1.95 |
| Shot firers (under normal conditions) | 3.34 |
| Fire runners, | 2.84 |
| Electric hoist operators for boys | 2.22 |
| Electric slope engineers, | 2.84 |
| Motormen | 2.84 |
| Pump men (inside) | 2.84 |
| Head machinists | 3.44 |
| Machinists | 3.05 |

2392 "Boys" means those of maximum age of 19 years.

| | |
|---|---|
| Day wages for digging coal | $3.15 |
| Machine runners, | 3.34 |
| Machine helpers, | 3.05 |
| Shaft sinkers, | 3.38 |

Outside Day Wage Scale.

| | |
|---|---|
| First blacksmiths, | 3.34 |
| Second blacksmiths, | 3.05 |
| Blacksmiths' helpers, | 2.62 |
| Carpenters, | 2.69 |
| All other outside day labor | 2.25 |

Scale of Engineers.

1. The price for engineers in this contract are used upon nine (9) hours per day and shall be as follows:

2. First class engineers, hoisting five hundred (500) tons of coal and over per day, $87.77 per month.

3. Second class engineers hoisting three hundred (300) tons and less than 500 tons of coal per day, $81.10 per month.

4. Third class engineers, hoisting less than three hundred (300) tons of coal per day, $72.21 per month.

5. The minimum rate for tail rope and slope engineers shall be $2.64 per day or $68.88 per month. Maximum rate for tail rope and slope engineers shall be $3.00 per day of $77.77 per month.

6. Twenty-six (26) days shall constitute a month.

Any overtime in excess of twenty-six (26) days per month, or of nine (9) hours per day, shall be paid for at a
2393 proportion rate.

General Conditions.

1. All break-throughs in Oklahoma shall be driven from six to eight feet wide, and paid for at the 1910-12 rate plus 5.26 per cent. All room break-throughs must be sheared before being shot, measurement of break-through shall be average of both ribs.

2. All coal in Oklahoma under 2 feet 10 inches on the 83-½ cent rate be declared deficient.

3. All coal under 4 feet in height in Oklahoma, where bottom brushing has not been paid for in rooms, it shall be paid for at 2-½ cents per inch per yard to make the required height.

4. Where air courses are driven in chute or platform work, shall be considered as air courses, and shall be paid for at the regular district price, provided such air courses or break-throughs are cut or sheared before being shot.

5. The company shall put in all batteries, wing-boards and platforms in all chute work in Oklahoma.

6. The miners shall load their own coal in pitching veins in this district at the regular scale price.

7. The taking up of bottom for stub switches for chute rooms will be done by the miner, and payment for same to be based on prices in effect 1910-1912 plus 5.26 per cent.

8. All company men shall receive an equal share of all work when competent to do such work.

9. Miners shall have the right to send out their dull tools on top of loaded cars, and the company shall deliver
2394 same to blacksmith shop for sharpening and no man be allowed to carry tools up or down shaft. In slope the company shall deliver the same to parting or bottom. The company shall not be responsible for tools.

10. Any underground employe not on hand to go down to work at the hour of commencing work shall not be entitled to go below, except at the convenience of the company.

11. When an employe is sick or injured he shall be given a cage at once. When a cage load of men come to the bottom of the shaft, who have been prevented from working by reason of falls or other things over which they have no control, they shall be given a cage at once. For the accommodation of individual employes less than a cage load, who have been prevented from working as above, cage will be run mid-forenoon, noon and mid-afternoon of each working day. Provided, however, that the foregoing shall not be permitted to enable men to leave their work for other than the reasons stated above.

12. The sinking of slopes and driving narrow work through faults shall be left to local union and mine management for adjustment.

13. All double shift places to be paid 32 cents per yard extra.

14. All wet entries, rooms, slopes, slope air courses, and all other work connected with the slope shall be left to local union and superintendent or manager for agreement of price.

15. Frozen or seamy coal, stuck top or bottom, shall be deficient work, and shall be paid for extra, the same to be determined by mine committee and pit boss, If they fail to agree the miner shall be given an average place in the mine.

2395 16. Where pit committee desires to test scales, such test shall be made before or after working hours, except in cases of emergency.

## Scale Prices For Blacksmithing Miners' Tools And Machine Mine Tools.

17. Three-fourths of 1 per cent on gross earnings for blacksmithing of miners' tools and three-eights of 1 per cent on gross earnings for machine coal loaders' tools.

All sharpening and repairs of tools shall be done as promptly as possible.

18. The present condition in regard to double and single work shall prevail.

19. Any employe absenting himself from work two days and not reporting for work on the morning of the third day, shall forfeit his right to his working place, unless excused by mine foreman, but shall be given another place on turn, provided, however, this shall not apply in case of sickness.

20. Where a fall occurs in any working place the company shall make preparations to clean up the same within four hours from time of notice; failing to do so, the miner or miners affected shall clean up same, company paying at the rate of $2.84 per shift.

21. Price for moving all draw slate and rock exceeding two inches in thickness, 2.7 cents per inch per running yard for each five feet in width and all over and above to be paid accordingly. This applies to all mines, except where there is a special contract.

2396 22. Where rooms are driven up narrow on account of bad top, the yardage shall be same as that in air courses, measurements to be made from the entry and when room is widened out, one-half room turning shall be paid. Where bottom is taken up, entry yardage shall be paid. This does not apply in rooms that have been widened out, then narrowed up and renecked, but in these cases the prices shall be the 1910-1912 rate, plus 5.26 per cent.

23. When a car leaves working place it is in charge of the company and average weight shall be paid for broken cars. Such cars shall be reported by the man that dumps the coal. The company shall keep all cars in good repair.

24. All coal four feet and over, where it comes down to under a thickness of three feet four inches, shall be declared deficient work.

25. When cars are delivered at the working face, all timbers, props and rails shall be delivered there, but in chute

rooms, where in the judgment of the company, the pitch is too steep to take care of the face, the miner shall, as a part of the work to be done by him, for the price of mining a ton of coal, carry such props as he may need from the entry to the face of his working place.

Powder.

26-a. The price of black powder during the life of this contract shall be $2.00 for a twenty-five pound keg.

26-b. Powder and other explosives to be purchased from the operator exclusively, who will deliver it to the working place as provided by law.

2397 26-c. The conditions relating to the use and sale of permissible explosives shall remain the same as those in effect March 31, 1912.

27. When an operator desires to drive room necks of greater length than the standard, he will be required to pay scale price for room turning, air courses yardage for each yard in addition to the standard length, where bottom is not taken up. Where bottom is taken up he will be required to pay entry yardage for each yard in addition to the standard length.

28. No yardage will be allowed where rooms are used as entries or air courses. Except this will not apply where a room is driven for the purpose of developing other rooms and evading the payment of yardage.

29. In all brushing or draw slate paid for on the yard or inch per yard basis the rock shall be disposed of by gobbing or loading into cars by the miner, at the prices named, without any additional compensation. This applies only to mines represented by the Operators' Association.

30. The question of flat sheets and wing board in chute rooms, the same conditions shall continue in the various mines as existed during the life of the last contract.

31. The price paid for mining the coal is to cover compensation for all other work done necessary to keep the working place in perfect condition for the protection of persons and property.

32. It is understood and agreed that the miner is required to keep his roadway in good condition from the entry switch to his working face, except that this will not apply in cases where a man takes a place partly worked out. In this
2398 case the miner will be responsible only for that part of the roadway he drives.

33. In the Lehigh-Coalgate field any room wider than fifteen feet shall not be considered narrow work.

Arkansas Contract.

Prices for mining in Arkansas and Eastern Oklahoma, at Coal Hill: Alix, Denning, Bonanza, Jenny Lind, Greenwood, Excelsior, Hackett City, Montreal, Burma, Midland City, Huntington, Hartford, Bates and Peoria, Arkansas and Sutter and Howe, Oklahoma.

1. The price for mine run coal shall be 68 cents per ton of 2,000 pounds.

Ouita.

1. For hand picked coal, free from slack, slate, sulphur, bony and blackjack, the price shall be as follows:

From the 1st of September to the 1st of March $1.32.

From the 1st of March to the 31st of August $1.17.

Spadra.

1. For mine run, 93-½ cents per ton of 2,000 pounds.

2. For all coal under three feet in height, for each three inches less of coal, shall be 5.6 per ton, additional to the above prices.

The prices for narrow work shall be as follows:

20 feet gob entries or air courses, per yard, $1.25

18 feet gob entries or air courses, per yard, 1.39

16 feet gob entries or air courses, per yard, 1.66

12 feet gob entries or air courses, per yard, 1.95

8 foot gob entries or air courses, per yard, 2.22

All brushing, 16 inch, per yard, $1.25

2399 All over 16 inches 7-3/4 cents for each inch extra.

The company shall have the right to do all brushing by shift work at $2.84 per day, when desired.

All cross-cuts in rooms shall be per yard, $1.25

All room turning, shall be per yard 1.25

The company agrees to pay 11.2 cents per ton for all coal coming from rooms over one hunderd and fifty feet in length.

The price for band rock in the Spadra field, excepting roadways in entries, shall be as follows: For all band rock over four inches in thickness up to eight inches in thickness, shall be 2.2 cents per ton per inch; all band rock eight inches in thickness up to and including sixteen inches in thickness shall be 2.7 cents per ton per inch, measurements to be made at the face in three different places.

The following prices for slopes and slope airways under normal conditions shall be:

Slope, 8 feet wide, 5-½ feet in height, per yard $6.66

Slope airways, 12 feet wide, per yard, 3.18

All wet places shall be, per yard, 56 cents extra, and company to take care of the water.

The price for building gob wall shall be per yard, $1.25.

Russellville.

1. 10 cents per ton less than the price paid at Ouita.

q. Entry yardage and deficiency work will be 1910-1912 rate plus 5.26 per cent advance. The same rules and customs defining deficient work in Russellville shall be in force during the life of this agreement.

2400 Local Conditions.

1. The brushing price at Bonanza, Jenny Lind, Coal Hill and Denning, shall be $1.56 for 18 inches of brushing. Where the company requires more than eighteen inches to be brushed, they agree to pay 8.8 cents per inch for each additional inch over eighteen inches.

2. Draw slate in air courses will be paid as follows:

For three inches or over ..... 27 cents

For six inches or over ..... 56 cents

For nine inches or over ..... 83 cents

For twelve inches or over ..... 1.12

3. All coal in Arkansas 2 feet 10 inches and less in height shall be considered deficient work, except where special price has been made.

All coal at Bonanza three feet under shall be considered deficient work.

4. Scale of prices to be paid for draw slate and rock at mines at Burma and Montreal No. 2.

Over four inches and up to eight inches 62 cents per yard. Over eight inches and up to twelve inches, 94 cents per yard. Over twelve inches, to be settled locally. Brushing entries to be $1.57 per yard.

5. Where bottom is taken up in rooms and room necks, it shall be paid 62 cents per yard. This applies to Burma only.

6. All cross-cuts in rooms when required to cut through, shall be paid at the rate of cross-cut yardage governing previous contract, plus 5.26 per cent. This applies to mines
2401 in Arkansas where cross-cuts were not paid for during former contract.

7. Brushing bottom in entries at Dallas mine, Burma, Arkansas, width of brushing to be four feet, height four feet six inches on top of rail. All over and above this height and width to be paid at the rate of 7-3/4 cents per inch.

8. (Agreement to refer same to P. R. Stewart and George Richardson to arrive at settlement, and become part of this contract.)

9. Where miners at Coal Hill, No. 18, Jenny Lind, and Denning, Arkansas, have been pushing cars both ways the company shall assist the miner one way when necessary; and all miners in Oklahoma who have been pushing cars both ways shall receive for all coal pushed over 200 feet, 5-½ cents per ton extra. The conditions that prevail at Lehigh apply to all mines on the Atoka track in regard to lowering cars down the switch.

10. Where the machine scale exists in any of the mines in Arkansas and Oklahoma either for chain or puncher machines that there will be a commission appointed, consisting of two operators and two miners to make a price for loading after machines and also for the cutter and helper, and in case they fail to agree in ten days they shall be empowered to select the fifth member of said commission and in case they fail to agree in five days on the selection of the fifth member the selection of the fifth member to be left to President Keith of the Southwestern Interstate Coal Operators' Association, and President Stewart of District No. 21, United Mine Workers of America, who shall select said fifth member in five days.

Said commission to have authority to make a day wage
2402 scale for loaders, runners and helpers until it is practical to put them on a tonnage basis.

10-a. It is mutually agreed by and between District No. 21, United Mine Workers of America, and the Southwestern Interstate Coal Operators' Association that the commission to be appointed under memorandum agreement dated May 21st, which is made a part hereof, shall be for United Mine Workers, District No. 21, P. R. Stewart, and James Mullen, and for the Operators Geo Richardson and J. E. Finney; and it is further understood and agreed by the parties hereto that prior to taking up the scale for either chain or puncher machines for any part of the district the party hereto may have the right to name another representative or representatives to take the place of the parties named herein, and that a notice of such intention shall be given at the time the meeting is arranged for the purpose of taking up and making said scale. In the event of their failure so to do, the parties named herein shall act.

11. It is agreed that to get a price on taking up bottom at the Greenwood Coal & Lumber Company's mine at Greenwood wood that as soon as the management reports the mine free from water that the District President shall appoint a man to go to Greenwood and Mr. Wm. McKinley shall represent the Greenwood Coal & Lumber Company. They shall forthwith go to Greenwood to examine the mine. The president of the local shall furnish a man and the company a man to take up bottom in the presence of these representatives. When they have ascertained by actual test the price that should be paid they shall write their findings and give one copy to
2403 president of the local and one to the company, and their finding shall be final. In case test is not made by measuring day, old price will be paid.

12. Central Coal & Coke Company mine, Hartford: Entry yardage, ($2.&0) per yard, finish entry. Room brushing 34 cents per yard.

Sutter.

1. The mining price at Sutter shall be 68 cents per ton. Room turning to be $6.25.

2. All entry, yardage and dead work to be 1910 rate, plus 5.26 per cent.

3. All refuse matter thrown into gob shall not be loaded unless same shall be paid for. Rate payment on such work to be agreed on by the company's representative and the pit committee. All coal shall be loaded the same as mine run coal in the Pittsburg Agreement, namely, every precaution shall

be used to prevent the loading of dirt. The rule adopted by the Pittsburg Conference for the loading of impurities shall not apply to Sutter to impurities passed through a screen, but to impurities passed over the screen, except where a miner does not use due caution or maliciously loads impurities.

4. Howe, Oklahoma, shall be included in scale District No. 2.

Inside Day Wage Scale.

| | | |
|---|---|---|
| | Timbermen, | $2.84 |
| | Track layers, | 2.84 |
| | Track layers' helpers, | 2.62 |
| | Trappers | 1.25 |
| | Bottom cagers, | 2.84 |
| 2404 | Drivers, | $2.84 |
| | Trip riders, | 2.84 |
| | Pushers, | 2.84 |
| | Water haulers and machine haulers, | 2.84 |
| | All other inside day labor | 2.62 |
| | Spragging, coupling and greasing when done by boys | 1.95 |
| | Shot firers, under normal conditions | 3.34 |

The fire boss shall receive $3.28 per day, and shall be subject to discharge by the management of the mine without appeal; if competent, shall be given other work.

The fire runner shall receive not less than $2.84 where such is employed.

Electric Hoist Operators:

| | | Per day. |
|---|---|---|
| | For boys, | $2.22 |
| | Electric slope engineers, | 2.84 |
| | Motormen | 2.84 |
| | Pumpmen, | 2.84 |
| | Head machinists, | 3.44 |

"Boys" means those of maximum age of 19 years.

| | | |
|---|---|---|
| | Day wages for digging coal, | 3.13 |
| | Machine runners, | 3.34 |
| | Machine helpers | 3 05 |
| 2405 | Shaft sinkers, | $3.38 |

Outside Day Wage Scale.

| | |
|---|---|
| First blacksmiths, | $3.34 |
| Second blacksmiths, | 3.05 |

| | |
|---|---|
| Blacksmiths' helpers, | 2.62 |
| Carpenters, | 2.69 |
| All other outside day labor, | 2.25 |

Scale for Engineers.

Steam locomotive engineers on outside work shall receive 34 cents per hour.

Engineers, first-class. 500 tons and over per month, $87.77.

Second class 300 to 500 tons per month, 81.10.

Third class 300 tons or less, per month 72.21.

The minimum rate for tail rope and slope engineers shall be $2.64 per day, or $68.88 per month; provided, further, that the maximum rate for tail rope and slope engineers shall be $3.00 per day, or $77.77 per month. Twenty-six days to constitute a month's work and nine hours to constitute a day's work. All overtime in excess of nine hours to be paid for at a proportionate rate per hour.

The mining prices, inside and outside day wage scale (except engineers), provided for in this contract, are based upon an eight-hour day.

General Conditions.

1. It is agreed to renew the contract expiring March 31, 1912, for District 21, except where local and district provisions and conditions already agreed to by the miners and operators conflict with the general interstate provisions that may be agreed to by the miners and operators at this conference. All joint decisions made in connection with the aforesaid agreement are confirmed.

2406

2. No person employed underground shall use an inferior grade of lard oil, and the use of any other except lard oil is prohibited. Rope riders in mine slopes are excepted.

3. Where coal is screened before being weighed it shall be dumped on flat sheets and passed over the screen specified in the Pittsburg Agreement, and there shall be no obstruction on said screen.

4. All company men shall receive an equal share of all work when competent to do such work.

5. The gas men shall place marks at last inside breaktroughs, showing clearly whether there is any standing gas in working place. Should there be standing gas, he shall

place a gas mark at room neck in addition to mark at inside break through; but should working place be clear, he shall place marks so indicating this at coal face. No miner shall be permitted to brush out gas.

6. Miners shall have the right to send out their dull tools on top of loaded cars and the company shall deliver same to blacksmith shop for sharpening, and no man be allowed to carry tools up or down shaft. In slopes the company shall deliver the same to parting or bottom. The company shall not be responsible for tools.

7. Any underground employe not on hand to go down to work at the hour for commencing work shall not be entitled to go below except at the convenience of the company. This applies where the company lets down the men on cages or with trip after starting time in the morning.
2407

8. When an employe is sick or injured he shall be given a cage at once. When a cage load of men come to the bottom of the shaft, who have been prevented from working by reason of falls or other things over which they have no control, they shall be given a cage at once. For the accommodation of individual employes less than a cage load who have been prevented from working as above, cage will be run mid-forenoon, noon and mid-afternoon each working day. Provided, however, that the foregoing shall not be permitted to enable men to leave their work for other than the reason stated above.

9. The sinking of slopes and driving narrow work through faults shall be left to local union and mine management for adjustment.

10. All double shift places to be paid 32 cents per yard extra.

11. All wet entries, rooms, slopes, slope air courses and all other work connected with the slopes shall be left to local union and superintendent or manager for agreement of price.

12. Frozen or seamy coal, stuck top or bottom, shall be deficient work, and shall be paid for extra, the same to be determined by mine committee and pit boss. If they fail to agree, the miner shall be given an average place in the mine.

13. There shall be no deduction for school purposes except authorized by the individuals.

14. For the health and safety of the miners' lives air courses shall be kept up with the entries as near as
2408 possible, and cross-cuts shall be driven every forty feet; where gas exists they shall be driven every thirty
feet. No room shall be turned inside the last cross-cut.

15. All coal under four feet in height where bottom has not been paid for in rooms shall be paid for at 2.4 cents per inch per yard.

Scale Price for Blacksmithing Miners' Tools and Machine Mine Tools.

16. Three-fourths of one per cent on gross earnings for blacksmithing of miners' tools, and three-eighths of one per cent on gross earnings for machine coal loaders' tools.

All sharpening and repairs of tools shall be done as promply as possible.

17. The present conditions in regard to double and single work shall prevail.

18. Any employe absenting himself from work two days, and not reporting for work on the morning of the third day, shall forfeit his right to his working place, unless excused by the mine foreman, but shall be given another place on turn; provided, however, this shall not apply in case of sickness.

19. When a fall occurs in any working place the company shall make preparations to clean up same within four hours from time of notice; failing to do so the miner or miners affected shall clean up same, company paying at the rate of $2.84 per shift.

20. Price for moving all draw slate and rock exceeding two inches in thickness, 2.7 cents per inch running yard for each five feet in widths, and all over and above to be
2409 paid accordingly. This applies to all mines except where there is a special contract.

21. Where rooms are driven up narrow on account of bad top, the yardage, and all over and above to be paid at measurements to be made from the entry; and when room is widened out one-half room turning shall be paid. Where bottom is taken up, entry yardage shall be paid. This does not apply in rooms that have been widened out then narrowed up and renecked, but in these cases prices shall be 1910 rate plus 5.26 per cent.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Q. Now, the Kali-Inla mine, however before January, 1914, was present and participated in all these joint conferences that you have referred to, as long as it was an operating company? A. Yes, sir.

Q. And it operated union? A. Yes, sir.

Q. And it continued to operate union, did it not, Mr. Bache?

2413 A. Yes.

Q. And it is operating under the union scale now? Is that not true? A. Yes.

Q. And you are president of the company today?

A. Yes.

Q. Now, have you made any money in any of these plaintiff companies, in their operations, within the five years preceding January 1st, 1914?

A. On the average, no; at times, yes.

Q. And what was the accumulated indebtedness of all of the companies on January 1st, 1914?

Mr. Drinker: If your Honor please, I object to that as having nothing to do with this case whatever, how much money they owed.

The Court: It may have some bearing on the value of the property.

Mr. Drinker: The property is just as valuable, no matter what they owed. It is just to mix things up.

The Court: Now, never mind. The amount of money that may be borrowed on property is some evidence of its value.

Mr. Drinker: May we ask if all this was secured by mortgages on the property?

Mr. Warrum: When you re-examine.

Mr. Drinker: Before the question is answered.

The Court: I think he may answer that.

By Mr. Drinker:

Q. Was any of the indebtedness of the companies

2414 secured by mortgages on the property? A. Yes, sir.

Q. How much of it, on these Arkansas properties? Take your time.

A. About $150,000, I think, was secured by mortgages, but I would have to look that up to be accurate.

By Mr. Warrum:

Q. You can discover that fact by looking at your books, can you not? A. I can discover it, anyway.

Q. It is a fact, however, that on January 1st, 1914, the indebtedness that has accumulated on that group of companies—

Mr. Drinker: If your Honor please, that is just another way of getting at it. He wants to ask how much money they owed.

The Court: This is cross-examination. He may answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Now, it is a fact that on January 1st, 1914, the indebtedness that had accumulated against the companies suing here was over $500,000. Is that not true?

A. Yes, I think it is.

Q. And that indebtedness continued to increase, did it not?

A. During the warfare down here it was added to materially.

Q. The Bache-Denman Coal Company on April 22nd, 1914, gave a ten per cent note for $75,000, did it not?

Mr. Drinker: I object to going into these matters, just to confuse the jury, as to when they borrowed money and why.

The Court: It might show the expense.

Mr. Drinker: He does not ask what the expense was.
2415 He is asking about borrowed money. They went into that the other time for two days.

Mr. Warrum: We went into it, all right, and there is no reason why we shouldn't go into it again.

The Court: Don't argue. He may answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Is that a fact? A. Ask your question again.

The Court: Read the question.

(Question read by reporter to witness.)

A. Yes.

Q. And the Bache-Denman Coal Company on the same date gave another ten per cent note for $18,000, did it not?

Mr. Drinker: The same objection.

The Court: Answer.

Mr. Drinker: Exception.

A. I think so.

Q. And the Coronado Coal Company, on the same date, gave another ten per cent note for $27,000, did it not?

Mr. Drinker: Objection.

The Court: He may answer.

Mr. Drinker: Exception.

A. I think so.

Q. The Denman Coal Company on the same date, gave another note, eight per cent note, for $2,947, did it not?

Mr. Drinker: Objection.

2416 The Court: He may answer.

Mr. Drinker: Exception. I understand I get an exception to each one?

The Court: Yes.

A. I think so.

Mr. Warrum: I understand the stipulation provided, when the case opened, that exceptions would be allowed to any ruling of the court, to the party aggrieved. Am I wrong?

The Court: You are partly right. To any class of evidence, one exception saves the entire matter.

Mr. Warrum: That was not the stipulation, if the court please.

Mr. Drinker: I want to be fair. I understand that everybody gets an exception, whether taken or not.

The Court: All right. Let it stand that way.

Q. Now, on the same date—no, not on the same date, but on July 22nd, didn't the Denman Coal Company give a demand note, eight per cent, for $2,947?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. I think so. You have got to understand, in testifying to this list of notes and things, I am just almost assuming that Mr. Warrum is asking me questions which are correct. I can not absolutely remember now on what date years ago I gave a $2900 note.

2417 Q. Mr. Bache, you have been present in court since it opened, have you not? A. Yes, more or less.

Q. You are familiar with your testimony on the former trial, are you not? A. Partly so.

Q. You have read it over, have you not? A. In part.

Q. You have discussed this very branch of the testimony, have you not?

A. No, I have not; in fact, I have not read this branch of the testimony over.

Q. I will ask you if on June 1st, 1914, the Hartford Coal Company did not give a demand note, eight per cent, for $8700?

Mr. Drinker: Objected to on the further ground that the note is the best evidence.

Mr. Warrum: It is cross-examination of this witness, who talks like he lost all his leases because he didn't have the money to pay for them.

Mr. Drinker: I am trying to be fair. He didn't state that.

The Court: He may answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. To the best of my knowledge, yes.

Q. And the Mammoth Vein Coal Company, on April 22nd, 1914, gave a ten per cent note for $40,000, did it not?

Mr. Drinker: The same objection.

2418 The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. Yes.

Q. And the same company, on December 31st, 1912, gave an eight per cent note for $41,000, did it not?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. Yes.

Q. And on July 24th, one day before the receiver was appointed, the Mammoth Vein Coal Company gave an eight per cent demand note for $3,448. Is that correct?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. I expect so.

Q. The Prairie Creek Coal Mining Company, on April 8th, 1913, gave an eight per cent note for $10,000, did it not?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. Very likely.

Q. And on July 24th, 1914, one day before the receiver was appointed, the Prairie Creek Coal Company gave
2419 an eight per cent demand note for $5,000, did it not?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. I expect so.

Q. And the Sebastian County Coal Company, an April 22nd, 1914, gave a ten per cent one year note for $10,000, did it not?

Mr. Drinker: Objection.

The Court: Answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. Yes.

Mr. Drinker: I move to strike all this out, on the ground that it does not show to whom the notes were payable, is entirely immaterial in this case, and the notes are the best evidence.

The Court: Motion denied.

Mr. Drinker: I except to the ruling of the court.

The Court: Proceed.

Q. I will ask you if you did not testify on the former trial of this case as follows: "What was the condition of the coal market during the few years preceding 1914?

A. Well, when these mines were opened up here in Arkansas,—when we first came over to Arkansas, the coal market was very good. The State of Texas to which a large part of this coal always went and goes, and the State of Oklahoma, and all this part of the country, was developing
2420 very fast, and the railroads were taking more and more coal every year for their own use. They are always the biggest consumers. And towns were springing up and new water plants and cotton gins were being constructed and everything was being developed and the country was increasing and the demand for coal was very strong. Along about 1904 or 1905 or 1906, perhaps, we commenced to feel the competition of fuel oil. They found big oil wells down in Texas and later found bigger ones in Oklahoma. And these oil wells produced oil very cheaply. After you got the well drilled all you had to do was to turn a valve and that was all of the cost of producing, and as far as the oil people wanted to go they could take our market away from us, and they did that to a considerable extent. But we did not regard that as a very serious menace except for the time being, because we knew the oil wells which had been discovered before had gone through a priod of gushing and low prices and then the oil got scarce and the price of oil went up, and we regarded that as a temporary condition that would not affect us for many years. However, they found additional oil wells up in Oklahoma and that maintained the low price for oil for more years than we expected, but along about 1913 the price of oil commenced to go up and it has been going up ever since. At one time it was selling at 10 cents a barrel and that has gradually worked up until now it is $2.00 a barrel and it does not compete with coal at all at that price. It takes about three and one half barrels of oil to equal one ton of coal. As soon as the oil people got their pipe lines in and were able to market
2421 their oil through the pipe lines all over the United States, it did not pay them to sell oil to burn in boilers any more, or not so much. On account of that competition of oil, and also on account of the discovery of gas, the market for this coal was decreased and the competition was quite intense for three or four years prior to 1914. And the

capacity of the mines was greater than the market would take care of and everybody tried to sell their coal against everybody else and the prices obtainable at that time were not satisfactory, at least as not satisfactory as they had been in the preceding period.

The coal business is like a pendulum. There will be a period of high prices and then several years of low prices, and then the high prices will come back, with as much certainty as the sun rises in the morning. That has been the history of it."

[—] Did you so testify

A. I think so. That sounds like it.

Q. Now, you stated that along in March, 1914, you concluded to operate non-union at Prairie Creek No. 4; that you had been thinking of it for some time before that, but it was in March, the last of March, 1914, that you come to a definite conclusion. Now, you have stated some of the considerations that affected you in coming to that conclusion. Did you overlook, Mr. Bache, the letter that Mr. Cameron wrote you in 1914, March 22nd, 1914?

A. I overlooked the letter entirely. I did not overlook the ideas that were in the letter.

Q. But you did testify on the former hearing: "Q. Now, will you look through the letter and see whether any-
2422 thing else, that is in the letter now, that was not in it when you received it? A. No. Q. Did the receipt of that letter by you, and the examination of the contents of it, have any influence upon your determination to open your mines open shop? A. I did. Q. What influence did it have on you? A. Tended to influence me to open the mines open shop."

Is that correct?

A. The contents of the letter.

Q. That was a letter written by J. S. Comeron?

A. It was.

Mr. Drinker: May he answer the other question?

Mr. Warrum: If I interrupted him. Anything else?

The Witness: Which question am I to answer?

The Court: Proceed with the examination.

Mr. Drinker: Answer the first question.

Mr. Warrum: I would like to have control of the witness, unless I am disorderly.

The Court: Yes.

Mr. Drinker: I don't object to counsel withdrawing a question, but I don't think he can withdraw it after the witness has started to answer it.

The Court: You would better permit the court to make the rulings, instead of taking it up between counsel. Proceed.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. You testified on the former trial that that letter influenced you?

2423 A. Yes, the contents of the letter influenced me.

Q. You said nothing about that on this trial. Did it influence you? A. Yes.

Q. Don't you know, as a matter of fact, and was it not developed at the other trial by the testimony of Mr. Cameron, that you had told him to write that letter, had send him across the street to the Main Hotel and told him what to put in the letter, dictated the letter to him? A. No.

Mr. McDonough: Your Honor, that is objected to on the ground that it is trying to elicit from this witness what another witness testified to.

The Court: It is cross examination. Proceed.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. (Continuing). Mr. Cameron was at that time superintendent of the mines. I happened to be at the Goldman Hotel and was sick. I had a conference there with Mr. Cameron, and John Patterson, and Mr. Finley, and perhaps one or two other men, at which we discussed the whole situation. After discussing the situation we reached various conclusions —we reached conclusions as to about what we would do. After reaching those conclusions, I wanted to get them in such shape—they were joint conclusions of all of us, the result of the conference—I wanted to get them in such shape in written form so I could send some letters to my friends in the East, whose money was largely invested in the shape

2424 of loans in our companies, and I told Cameron to go down to the Hotel Main, about half a mile away, where he happened to be staying, and write them out. It was in the night time. He couldn't go in the office and typewrite them. Next morning he came in the office, to the best of my memory, and handed me the letter.

Q. I will hand you this letter, which seems to have been marked as an exhibit in the previous trial.

A. Yes, sir.

Mr. Warrum: I will first ask to have it marked for identification.

(The letter referred to was thereupon marked by the reporter "Defendants' Exhibit No. 24".)

Q. Is that the letter Mr. Cameron wrote you at your suggestion or your dictation?

A. He did not write it at my dictation.

Q. Is that the letter you referred to, that Mr. Cameron wrote you when he went across to the Main Hotel from your conference?

A. He didn't go across to the Main Hotel. He went from the Goldman Hotel to the Main Hotel.

Q. Well, now, having outlined his course of travel, is that the letter that he wrote you?

A. That is the letter.

Mr. Warrum: We offer the letter in evidence.

The Court: Very well.

Mr. Drinker: Are you going to read it?

Mr. Warrum: Not just now. I want to go ahead with
2425 some thing else now.

(Said Defendants' Exhibit No. 24 is in the words and figures following, to-wit:)

Defendants' Exhibit No. 24.

"Ft. Smith, Arkansas, March 22nd, 1914.

Mr. F. Bache, President Bache-Denman Coal Company,
Ft. Smith, Arkansas.

Dear Sir:

The cost of mining coal at the different mines of your company has increased to such an extent during the past ten years that it is imperative, in my judgment, that a radical change be made both in the scale of wages paid for mining and in the class of labor performed.

At the present time the cost of production equals or exceeds the gross revenue per ton realized on the coal, and it is evident to me that a continuation of the present policy of the company with reference to wages paid, conditions of employ-

ment and the class of labor employed means a continued increase in the cost of production, and in a greater ratio than that which has obtained during the past ten years. This condition, if permitted to grow, can result only in the final indefinite suspension of operations at the mines, and the lying idle of a property in which a large sum of money has been invested.

In order that a remedy may be suggested to prevent the suspension of operation at the mines of the company let us review the causes that have forced upon us an approximate increase in the cost per ton of mining coal, of sixty
2426 per cent in the last 10 years.

Prior to the year 1903 the mines in the southwestern district of which Arkansas and Oklahoma are a part, were operated principally on the open shop or non-union basis and up to that time the principal items that entered into the cost of producing coal at the mines are:

1st. Mining rate per ton of coal.

2nd. Yardage and narrow work.

3rd. Company labor.

The rate of payment covering the above items of expense have by contract with the United Mine Workers of America, from time to time increased until in the aggregate it has amounted to 40 per cent.

In addition to this increase from additions to the three items referred to, the miners through their local organizations forces payment from the company for work which they have designated as dead work, and which was always prior to their advent into the field considered as being paid for in the mining rate for digging a ton of coal. Some of the items that has entered into this are pay for bone and other impurities, rolls, frozen coal, etc. etc. The increase from these and other conditions which they have forced, amounts to at least 20 per cent or during the past 10 years they have increased the cost of production in the aggregate at least sixty per cent.

In other words, if we would take the mine No. 4, Prairie Creek, as an example, we could with the same prices, conditions of employment, etc., that were in effect at that
2427 time expect a cost of production of one dollar per ton as against a cost of $1.60 at the present time.

Any attempt at the present time to reduce expenses, drive new work, change system of mining, etc., is met with the most stubborn resistance possible, in fact their demands in every respect must be conceded, or the entire property is called out on strike. They not only dictate prices for all class of new work, but through their pit committee control the hiring of employes and will permit the discharge of none, which means that discipline in any respect and for any fault is successfully resisted in all cases.

I am firmly of the opinion that a continuation of business relations with them means a strengthening of their power over us if that is possible and to remedy these evils it seems evident to me that the first thing necessary is to rid the management of the interference of the local unions through their pit committees or in other words to operate the mines on a non-union basis.

To do this means a bitter fight, but in my opinion it can be accomplished by proper organization.

If this is successfully accomplished it would then permit us to pay for all work on a basis that would materially lessen the cost of production.

For example the miner who we will pay in mine No. 4 mines, a ton of coal is paid for it at the rate of 68 cents per ton. In mining this coal he does various classes of labor, viz: the timbering and taking care of his place, the placing of
2428 shots, etc., which could properly be classed as skilled labor. He also loads the coal into the mine cars after it is shot but this could not be possibly termed skilled labor, in fact the most common kind of labor could perform as much of it as the most skilled miner. In other words, the miner is paid for all the labor he performs, both skilled and unskilled at the maximum pay for skilled labor.

On a non-union basis this could be remedied and skilled men could be employed to do only such work as skilled labor would be required and be paid for on this basis which the shoveling of coal, requiring the most common kind of labor, could be paid for accordingly.

The physical conditions in mine No. 4 are such that the employment of unskilled labor should be a matter of little concern, for here the thickness of the veins, the sandstone roof, light pitch and absence of gas all combine to make almost ideal conditions for the employment of labor not accustomed to coal mines.

If this system should be applied to one entry, for example in mine No. 4, we could reasonably except the following results on the basis of a production from same of 100 tons of coal per shift:—

| | | |
|---|---|---|
| | 1 foreman | $ 4.00 |
| | 1 gasman | $ 3.50 |
| | 3 drivers, $2.84 | $ 8.52 |
| | 3 timber men, $3.00 | $ 9.00 |
| | 2 bosses, $3.50 | $ 7.00 |
| 2429 | 10 loaders, $2.25 | $22.50 |
| | 3 topmen, $2.25 | $ 6.75 |
| | 3 firemen, $2.25 | $ 6.75 |
| | 1 blacksmith | $ 3.50 |
| | 1 engineer | $ 4.00 |
| | 2 cagers, $284 | $ 5.68 |
| | Powder | $ 8.00 |
| | Supplies | $15.00 |
| | | $104.20 |

Or a cost of $1.042 per ton. This should be extended to every entry in the mine as rapidly as possible.

I know you appreciate the fact that the success of this plan means the utter annihilation of the union so far as our mines are concerned but with this accomplished I see nothing in the way of realizing the above results."

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By Mr. Warrum:

Q. Now, Mr. Bache, you testified as to these pictures. When were they made?

A. They were made back in 1913.

Q. What time in 1913?

A. I don't recall.

Q. You testified on direct examination that they were made a short time before the trouble. By that do you mean something like a year before the trouble?

A. Something like that, I would say.

Q. Now, when you decided to operate Prairie Creek open shop, you came to the conclusion that you would not do it through the Prairie Creek Coal Mining Company or
2430 the Mammoth Vein Coal Company, which were at that time interested in the lease and its operation, but that you would conduct the operation through another company. Is that right?

A. The Mammoth Vein Coal Company did not operate under a lease; it operated on its own land.

Q. Well, on its own land. You understand what I mean.

A. You ask me a question with a lot of things in it, and I have to straighten you out, that is all.

Q. All right, straighten me out, and then answer.

The Court: Proceed.

A. I decided, yes, to operate under another company.

Q. So you organized the Mammoth Vein Coal Mining Company?

A. It was organized several years before that time.

Q. Had it been doing anything?

A. It had.

Q. What had it been doing?

A. It was organized for the sole purpose of taking the lease from the Cherokee Construction Company for about 370 acres of coal land lying immediately under and down the dip.

Q. Had it taken that lease?

A. Let me finish my answer.

Q. Go on.

A. Lying down the dip and under the mine then being worked by the Mammoth Vein Coal Company on lease which we owned.

Q. Had it taken that lease?

A. It had taken that lease.

Q. What was it capitalized for?

2431 A. It was capitalized for $100.

Q. 100 shares at $1 each.

A. I think so.

Q. You had 96 shares? A. I think so.

Q. Did you continue to hold them or did you turn them over to Bache-Denman Company?

A. They were turned over to the Bache-Denman Company, or to another company, and that company in turn turned them over to the Bache Company, I don't remember exactly.

Q. This Cammoth Vein Coal Mining Company was organized in West Virginia?

A. It was a West Virginia corporation.

Q. And you came to the conclusion that if you could turn these operations at No. 4 Prairie Creek over to a West Virginia company, you might with better success and more plausibility violate the scale contract the Prairie Creek Mining Company and the Mammoth Vein Coal Company had with the union, and in the event of trouble you could have the protection of the Federal Court. Is that right?

A. If you will separate your questions, I will be able to answer it. I did it entirely for the purpose of getting the protection of the Federal Court, and for no other reason.

Q. It did not enter into your mind that you had an outstanding contract between the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Company, and the local union, and you wanted a new contract, so they could not say that you had volated the old contract. Is that right?

2432 A. I didn't ask for a new contract. I didn't want a new contract. The contract we had been operating under had been obtained by bribery, had been broken and violated time and again. I regarded it as a dirty, filthy concern that did not exist, was void. It was not in my thought at the time.

Q. You had no respect for it?

A. None whatever, deservedly.

Q. That was not one of your motives?

A. Absolutely not.

Q. To turn over your leasehold operations to get away from the contract you had made with the union?

A. Absolutely not.

Q. The union contract itself expired in July 1914, did it not? A. I think so.

Q. You closed down March 22nd, 1914?

A. About that time.

Q. Did you put any cables around the Coronado mine?

A. No.

Q. Did you put in any electric lights there?

A. No.

Q. Did you hire any guards at the Coronado?

A. No.

Q. You continued to operate under union conditions, as far as you were concerned?

A. For a day or two.

Q. And did you take any steps yourself to terminate

2433 your relations with the miners?

A. No, sir. I had plenty on my hands over at No. 4. I was going to move over to Coronado after I got No. 4 going

Q. That is true of the Kali-Inla mine in Oklahoma?

A. The Kali-Inla mine also.

Q. Now, you went to Kansas City and hired two men from the Burns Detective Agency?

A. Two or three.

Q. Two or three? A. Or four.

Q. Or four? A. Yes.
Q. Could it have been five?
A. I don't think so. I think it was less than five.
Q. How many guns did you finally purchase between April 1st and July 15th?
A. 50 or 60.
Q. I will ask you if you didn't testify as follows, on the former trial of this case: "Q. Did you buy any rifles right after the April 6th trouble? A. I don't think we bought them right afterwards, because there was no purpose for buying them. Q. When the men went back, right after that? A. Yes, sir, when they went back. Q. How many—do you remember how many you bought? A. I think we bought 60 or 70, throughout the trouble, but what days we got them I don't recall. Q. Between what dates did you buy 60 or 70 rifles? A. Between the first of April and July 17th."
2434 Is that right?
A. I suppose that is correct.
Q. And you employed four or five guards out there?
A. (No answer.)
Q. And you also testified:
"Q. How much ammunition did you buy for those rifles? A. I don't recall, but several hundred rounds, or probably several thousand rounds." Is that right?
A. I think so. I think you are reading it correctly.
Q. You only had four or five guards?
A. Oh, no, we only had four or five of those men from Burns.
Q. How many guards did you have altogether?
A. We had no guards besides those men, in the proper sense of the word. They were mostly miners and people down there who worked there, but did guard duty in between times. We had three or four or five or six there guarding, some men from down at Johnstown, Arkansas, but the only guards we had there were these half a dozen or less fellows from Burns, as professional guards, you understand. The rest were local fellows.
Q. When were you down there between April 1st, and July 17th?
A. I don't remember the dates. I have no way of refreshing my memory.
Q. How many times were you down there?
A. Half a dozen or more.
Q. Was Mr. Denman there?
A. Once. No, he was never there when I was down
2435 there, I don't think.

Q. Where had Mr. Denman gone?
A. He had left us before we made the fight.
Q. Mr. Denman was still interested in the Bache-Denman Company, was he not?
A. Yes, sir, he still had his stock in the company, but he was back in Pennsylvania.
Q. Do you know where he lives now?
A. Down at—no, I don't know, but I think at Clarksville.
Q. Don't you know he is living at Clarksville?
A. I don't know.
Q. You don't know that? A. No.
Q. He was here and testified at the other trial, was he not? A. Yes, sir.
Q. Wasn't Mr. Denman down at these mines frequently during the three or four years preceding January 1st, 1914?
A. Yes, he used to go up and down there quite often.
Q. He was more in charge of the mines than you were, was he not? A. Not by a good deal.

Mr. Warrum: That is all.

The Court: Stand down.

Mr. Drinker: One moment, please.

Redirect Examination

By Mr. Drinker:
Q. You say Mr. Denman was not here during this trouble?
A. Mr. Denman left us on the first of January. I had
2436 carry the fight on by myself.
Q. Did he know you were going to make that fight?
A. Yes.
Q. Not on the first of January, but before you made it?
A. We talked about it in the fall of 1913, and agreed that was practically the only thing to do.
Q. And he concluded to stay in Pennsylvania during that trouble?
A. He stayed there, except for one week.
Q. When was he here?
A. Some time during the strike, some time between the riot and the battle, I think in June.
Q. Now, about the time in 1910 that Mr. Warrum questioned you on, when did you go out of the operators' association relative to the time when you signed a separate contract with Stewart, just to make that clear?
A. I resigned from the operators' association about ten o'clock in the morning, and signed the contract about eleven o'clock the same day.

Q. How long after that did you receive notice that the association had expelled you?

A. About a month.

Q. What did you do to resign?

A. I resigned. I went in the operators' association and resigned.

Q. Who were there when you resigned and what did you do?

A. Pretty much all this committee of nine and the executive committee, all the large operators.

Q. Were they in the room there?

A. Yes.

2437 Q. What did you do?

A. I just walked in and said I resigned from the operators' association and left. One of them followed me out of the room and wanted me not to resign.

Q. You made it perfectly clear to them that you were out, did you? A. Very clear, indeed.

Q. And a month after that you were expelled?

A. That was about the time I got the letter saying I was expelled.

Q. Now, about the attempt to operate the Kali-Inla open shop, did you make any attempt to try to operate Kali-Inla in Oklahoma open shop after this trouble?

A. No.

Q. That was the only mine you had left, was it not?

A. That was the only mine we had left. All the rest were taken out of our hands by the receiver.

Q. Mr. Warrum has asked you at length with regard to the indebtedness you have incurred. How much money were these companies able to borrow altogether? How much did you say?

A. These companies owed about five or six hundred thousand dollars. We had put about five or six hundred thousand dollars into the companies, largely from money borrowed subscribed for stock.

Q. And the people from whom you borrowed that money were willing to lend it to you?

A. Yes, sir.

2438 Q. Did you, at the time before these properties were destroyed or injured, have the money or resources to pay this money back when it became due?

A. We had the resources to pay it back; we didn't have the cash in bank to pay it back.

Q. Did you have enough resources so that you could have paid these debts from time to time as they became due?

A. Yes, in the ordinary course of business we could have done it.

Q. Now, in the fall of the year—

A. We borrowed $75,000 after the first riot down there.

Q. In order to carry on the mines?

A. Yes, sir.

Q. You were not making any money at the mine?

A. No, sir.

Q. They were not digging coal?

A. No, sir.

Q. You couldn't ship any coal?

A. No, sir.

Q. You had to have money to pay your men?

A. Yes, sir.

Q. You were late with your pay rolls in that whole trouble?

A. I never lost a pay roll or failed to pay a man on the dot for the 15 years I have been in business, or 20 years.

Q. Did you pay all the men off before the battle?

A. Every one.

Q. In full? A. Every one.

2439 Q. Did you pay their expenses to get away to other places? A. Some of them.

Q. After this whole thing was over, in the fall, what happened to your leases? A. The court cancelled them.

Q. On what ground?

A. On the ground that the companies had been rendered insolvent by the destruction of the property. I have forgotten the decision. It is in the court's decision.

Q. What was it that made the companies insolvent, as a matter of fact? A. The destruction of the property.

Q. You didn't have anything left to pay the debts with?

A. No. They were wiped out.

Q. Now, about these guards, Barnes was the chief one that was guarding the property, that was not a coal digger?

A. Barnes, yes, sir.

Q. How long was he there?

A. He was there for ten days a week or ten days.

Q. He never went back after the 6th of April?

A. No. He came in from there in April, and it took him about a week or something like that to recover from his injuries.

Q. Where did he go? A. Kansas City.

Q. He never came back?

A. No, sir. I took him up there.

Q. How long did the other Burns people stay there?

2440 A. They left at the same time he did.

Q. There were no Burns men there after the first of May? A. No.

Q. Of all the ones that were there in the beginning, five or six, whatever it was, they were not there after what date?

A. After April 6th.

Q. And from April 6th was there a man on that property that was hired solely as a guard, and was not hired to do whatever work you gave him to do?

A. I think not. Those that were there were all local coal diggers and Arkansas men.

Q. Did you look up the data I asked you about yesterday?

A. I can give it to you as to the whole thing, but to get it accurately it would take some time. I can give it roughly.

Q. We want to get it right. A. All right.

The Court: Better get it right. Stand down.

Recross Examination

By Mr. Warrum:

Q. I will ask you if you testified as follows on the former trial: "Q. Now, is the property that these plaintiffs own here in Arkansas—is that the property that has been constructed and bought, the equipment and all, with the money you have made from the Kali-Inla property? A. No. Q. Funds from the Kali-Inla mine? A. No. Q. And about what amount of money comes from the Kali-Inla? A.

2441 About $400,000." Is that correct?

A. That is about right.

Q. And you further testified: "Q. You had the Kali-Inla Company borrow money to loan to your plaintiff companies in this state? A. Yes. Q. Have they paid it all back? A. No. Q. How much do they owe? A. The same amount. Q. To whom do they owe it? A. To the Kali-Inla Coal Company. Q. I mean the Kali-Inla Coal Company. I understood you to say that the Kali-Inla Coal Company borrowed money and loaned it to the plaintiff companies in Arkansas to equip these mines? A. Yes. Q. About $400,000? A. I do not think you asked it quite that way. You asked how much we put in. We have put in about $300,000 in the shape of loans and I think eighty or ninety thousand dollars well, that was put in in loans and later put in stock. They took the stock of one of the companies in place of notes. Q. Did you bring the mine equipment, I mean the machinery and equipment that you had been producing coal with in the mines of the plaintiff here, did you bring that from the Kali-Inla Company, did it furnish it? A. It furnished a little. Q.

What? A. I can't answer offhand. Q. What mine? A. Well, some at Prairie Creek, I think, and some at Mammoth Vein, and some probably at Coronado; I can not answer that with any degree of accuracy. I know they bought some equipment and leased it to those companies." Is that correct? A. That sounds right.

Q. And you so testify now? A. Yes.

2442 Mr. Warrum: That is all.

The Court: Stand down.

Mr. Drinker: One moment, please. I would like to find the redirect in the record.

The Court: Can't you ask him without looking at the other examination?

Mr. Drinker: I want to see what he said at the other time. We had the same thing then.

The Court: Can't you ask him another question?

Redirect Examination

By Mr. Drinker:

Q. Mr. Bache, during the period before 1914 how much money of the profits of the Kali-Inla Coal Company was put into these Arkansas properties? A. What period, please?

Q. All the periods. A. All the periods?

Q. Yes. A. About $400,000. I want to amend that.

Q. How much a year for how many years?

A. The Kali-Inla Coal Company put into those properties about $400,000.

Q. Did you ever take a dividend from the Kali-Inla Coal Company prior to 1914? A. No, sir.

2443 Q. You put all the money you made in these Arkansas properties that were subsequently destroyed?

A. Yes.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

Mr. Drinker: I had no idea we would get through this soon. If your Honor could adjourn now, I think I could save time during the noon hour.

The Court: I don't understand how it could have taken much longer.

Mr. Drinker: They were two days on the cross-examination of this witness the other time.

The Court: Very well. We will take a recess until two o'clock.

(Whereupon, at 12:10 o'clock P. M., after the usual admonition by the court to the jury, a recess was taken until 2:00 o'clock P. M.)

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2444 After Recess 2 P. M.

The Court: Proceed with the trial.

Mr. Drinker: We offer the following articles from the United Mine Workers Journal. First, from the Journal of the 30th of July, 1914, on page 2, as found in the record of the previous trial, on page 2394, down as far as "not to violate the injunction".

Mr. Warrum: To this offer the defendants separately renew their objection heretofore made.

The Court: The same ruling.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. McDonough (reading):

"Miners Wait Contempt Decision of U. S. Judge.

Union President and Six Others Figure in Case of Unionist.

Huntington, Ark., July 25.

United States Judge Youmans will render his decision in the contempt charges against President P. R. Stewart, of the miner's union, and six others within the next three weeks. The cases occupied the time of the Federal Court for the past two weeks. Over a hundred witnesses were summoned.

Judge Youmans stated at the conclusion of the arguments by the counsel for the Mammoth Vein Coal Mining Company and the United Mine Workers of America that he wanted to examine the testimony of the witnesses further and
2445 that he would render his decision later. The defendants are under bonds of $100 each.

Fred W. Holt, secretary of District 21, of the miners' union, testified that he shipped guns from McAlester, Okla., his home, to Midland, for the purpose of enabling the miners to

protect their wives and children against the outrages committed by the private armed guards. He stated that the arms were shipped without the knowledge of President Stewart. Deputy Marshal Jim Holt, who has been stationed at Mine No. 4 to keep Marshal Frank Hayes advised of the situation, when placed on the stand denied the testimony of company guards.

President Stewart testified he had always advised the members of the union residing at or near Prairie Creek not to violate the injunction."

2446 Mr. Drinker: From the Journal of the 25th of June, 1914, page 5, column 3.

Mr. Warrum: The defendants renew their objection.

The Court: Overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

"Financial Secretaries Take Notice.

McAlester, Okla., June 19.

No card should be accepted from Local Union 567, Hartford, Ark., because of the fact that the secretary, E. E. Sarls, has taken the charter, seal and supplies with him into the bull pen at Prairie Creek, Ark., which is now operating as non-union. The card book that he has with him is No. 4-857.

FRED W. HOLT,
Secretary-Treasurer."

From the United Mine Workers Journal of the 6th of August, 1914, page 5, entitled "Scab Expelled"; found on page 2399 of the former record.

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the defendants, and each of them, at the time, duly excepted and still except.

Mr. Drinker (reading):

"Scab Expelled.

Denning, Ark., July 29.

Complying with the instructions of L. U. 1814 I hereby ask you to publish the name of one Lorenzo Hallowell as a scab.

He was formerly a member of this local and has confessed to guarding scabs for the Bache-Denman Company at Prairie Creek during the recent trouble at that place.

E. B. STOCKTON,
Sec. L. U. 1814."

2447 Mr. Drinker: From the United Mine Workers Journal of the 19th of November, 1914, page 8, page 2401 of the old record, being an article there and in it another article entitled, History of the Case, quoted from the Hartford Observer.

Mr. Warrum: The defendants renew their objection to each of the extracts separately.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

"Federal Troops In Camp Near Prairie Creek No. 3.

Hartford, Ark., Nov. 12.

Troops A. B. C and D of the Fifth Regiment of the United States cavalry arrived at Prairie Creek Friday and pitched temporary camp on the ball grounds at that place. On Sunday they moved to the site of old No. 3, where they are close to James Fork creek, where a more bountiful supply of water is to be had. They will probably all remain at their present camping place according to information secured from Adjutant F. E. Davis.

Each troop consists of about sixty men and the following officers are in charge; Major Nathaniel McClue, commander-in-chief; Senior Captain W. B. Scales, in command of troop A; junior Captain Theo. B. Taylor, in command of troop D; Lieutenant John H. Barnard of troop C, and Second Lieutenant W. H. Young of troop B; F. E. Davis, acting quartermaster and adjutant to Major McClure; E. Converse is in charge of the machine gun detachment. This detach-
2448 ment consists of twenty-five men and five guns capable of firing 600 rounds per minute. The hospital or Red Cross corps consists of a surgeon, a sergeant and five privates. Their services were in immediate demand upon their arrival, as one private was seriously injured by a mule jumping on him while they were unloading. For a short time it was thought the soldier was killed, but he recovered to some extent and was sent back to Fort Sheridan on Saturday.

On Saturday a regular picnic was made of their camp, sightseers from all the surrounding towns being on the ground from morning till night and all were accorded a welcome. Both officers and privates speak in highest terms of the friendly hospitable manner in which they have been received and are delighted with the climate, the scenery and the people of Arkansas. The scarcity of water near their location is the only serious drawback to be overcome.

The appearance of the soldiers on the streets occasioned a good deal of natural curiosity at first and they were usually attended by a crowd of small boys who apparently expected something in the way of a circus, but everywhere and by everyone they were treated with courtesy and consideration."

Mr. Drinker: From the United Mine Workers Journal of the 26th of November, 1914, page 1, an article entitled—it is found on page 2408 of the old record, and we will put it in without reading.

Mr. Warrum: Defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants,
2449 and each of them, at the time duly excepted and still except.

(Said article so offered in evidence is in words and figures following, to-wit:)

"26 Miners Indicted
Some Frivolous Charges.

(Special to Mine Workers Journal.)

Ft. Smith, Ark., Nov. 20.

The most unnecessary Federal grand jury ever assembled by a Federal judge to probe disturbances of a stricken community today returned twenty-six indictments against members of the United Mine Workers. The following were indicted under the blanket indictment: P. R Stewart, former president of District 21; Fred W. Holt, former secretary of District 21; James McNamara, former member of the City Council, Hartford, Ark.; James Slankard, resigned constable of Hartford township; Sandy Robinson, Charles Robinson, Bee Trout, Valentin Burillo, John Manick, Moro Colo, Wm. Reed, Nichael Ryan, Foster Bean, Charley Robinson, Charles M. Blackburn, Bruce Jordan, Marvin Ray, Ernest Neim,

James Z. Crossley, Frank Crossley, Marvin Stanfield, Wm. W. Roberts, John Champion, Dave Branch, Jesse Edward and Clint Burris.

The indicted men are charged with conspiracy. Some of the 'overt acts' set out in the indictment are interesting.

The fourth count follows:

'Said Moro Colo (otherwise called Morro Collo) and Foster Bean (otherwise called Foster Beam) on May 16, 1914, at Prairie Creek, aforesaid three stones at certain em-
2450 ployes of said Mammoth Vein Coal Company, to-wit: Charles Cherk, Earl Kuntz, Will Bohannon and Levi Brown.'

The idea of a special grand jury of the United States Court being necessary to determine the damage done by a 'pebble thrower', in what is said to be by the judge of the court a serious conflict between capital and labor. Never before in the history of the Nation has the same smallness in scope of procedure been equaled.

The fifth count in the indictment is doubtless one of the most serious charges that was ever embraced in any indictment. It follows:

'Said Sandy Robinson (otherwise known as Sandy Robertson), Moro Colo and Charlie Johnson, James Slankard and others, on June 10, 1914, at Prairie Creek, aforesaid cut and destroyed a bag of feed belonging to said Mammoth Vein Coal Company.'

The terrible destruction of a sack of feed is another evidence of the great danger to which the lives of the peaceful citizenship of Hartford was daily menaced and made necessary the calling of the special grand jury.

And now we have the indictment resulting from the fact that Judge Youmans received a threatening letter from some unknown, which the judge said made him ever fearful for his personal safety. The section of the indictment and the letter follows:

'Said James Z. Crossley, on July 27, 1914, deposited in a railway post office on the Rock Island railroad, for
2451 mailing and delivery of the judge of said United States Court for the western district of Arkansas, a certain letter, to-wit, a letter of the tenor following:

'July 27, 1914.

'Judge Youmans:

Dear Sir:—You know the acts you have decided upon. As a warning friend, we caution you to be more considerate on the administration of your decisions. You are notified to comply with requirements of your office. If such is not complied with very shortly their's likely to be an unexpected change between your soul and fleshy temple, and you won't know the day, nor time, nor what means such will take place. Still we don't want to act cowardly, but give you a little time to act differently, and at any rate you will have a little time for future preparation for the place called Heaven. You are weighed in the balance and found wanting Their's a great change soon to happen.

Signed, FOREWARNED.

This is a barking dog, and if teased much longer will bite.

President of Committee.'

Such were the findings of a special grand jury of the Federal Court, impaneled by Judge Youmans to probe the recent mining troubles in Arkansas.

All of the men indicted will surrender and make bond."

Mr. Drinker: From the same Journal, on page 7, the article entitled "Causes That Led to the Arkansas Trouble".

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants,
2452 and each of them, at the time duly excepted and still except.

"Causes That Led Up To Trouble In Arkansas. (By K. C. Adams.)

Ft. Smith, Ark., Nov. 20.

The industrial trouble in Arkansas is more than a fight between employes and employer; more than a conflict between a powerful corporation on one side and a powerful corporation on one side and a powerful union on the other. It is a battle to a finish to see whether the Federal Government will protect unsound business enterprises against the protest of legitimate demands coming from disturbed citizens who have innocently have fallen victims to the shortcomings of mismanagement.

The transportation of non-union employes by Mr. Bache to his Hartford Valley mines evidences the fact that he nor his associates have any intention of observing the law. Armed with high powered guns and with broken boxes of ammunition laying in the bottom of wagons, the recruits were conveyed to Prairie Creek. Thus did they mount the chip of defiance on their shoulder and invade the disturbed community which they had previously antagonized.

When informed that the non-union men carried guns with them, special prosecutor Hill stated that the 'non-union men had done nothing more than the citizenship had done in carrying guns with them', as all reports reaching him indicated that in most instances the citizens of the Hartford Valley were armed with high power rifles. This statement is unfair and untrue.

2453 It is not now difficult to understand the sympathies of the special prosecutor. Never before in the history of an indultrial conflict have the Federal troops been dispatched to protect armed men to defy the innocent citizenship of a community. Never before has a government prosecutor given his approval of such an occurrence.

For several months, in his endeavor to assume the role of the persecuted to cover his own mistakes as manager of his numerous allied companies, Mr. Bache had a representative in Washington laying the foundation for the sending of Federal troops into Arkansas. But to the surprise of all, a special prosecutor also was sent to inspect this section. Four months from Porto Rico, where he performed detail in the Department of Justice, gave this prosecutor a complete understanding of labor conflicts. When I asked him if the guns carried by the non-union men were 'high powers or shot guns', what do you suppose he said?

'Why, I know nothing about guns myself.'

Then I asked him if he was not investigating a conflict in which guns were supposed to be used. He replied that he was, but that he knew nothing about them. There can be no question but what Mr. Hull is of the opinion that the locked out miners and sympathizers are armed. As an example, the following section of the grand jury:

'Said Moro Colo (otherwise called Morro Collo) and Foster Bean (otherwise called Foster Beam) on July 16, 1914, at Prairie Creek, aforesaid threw stones at certain employes of said Mammoth Vein Coal Mining Company, to-wit:
2454 Charles Cheek, Earl Kuntz, Will Bohanon and Levi Brown.

In the next paragraph of the indictment four men are charged with having destroyed or attempted to destroy a sack of feed. Wonderful work, isn't it? Think of the National government calling out the Federal troops and sending a special prosecutor into Arkansas to determine the real purpose of the pebble throwers and the destruction of a sack of feed.

It is indeed ridiculous. When the full investigation of Bache vs. The People is revealed to the nation the parties responsible for the coming of the Federal troops will be held up to the Nation's scorn.

No one can justify the action of Mr. Bache. No sane person would attempt to justify his course. His first move was to force other concerns to take over his property. He outlawed himself from legitimate business activity. His policy has been to rule or ruin. This is the policy that has victimized the National government officials.

But there is an end to all things. He cannot forever do the things that he has done. He cannot successfully prove that the miners or the citizens are armed to fight him or his hirelings. No representatives of the government can prove this charge. The fact is that the miners are content to take their chances in a Federal investigation that will go to the bottom of the difficulty, and establish the guilt where the guilty will be punished. If Mr. Bache would ever agree to go into an open, unrestricted hearing, the organization of workingmen who he now seeks to exterminate will cooperate with
2455 him in every possible manner. But Bache seeks to shield himself under the cloak of the law."

Mr. Drinker: From the same issue, on the same page, page 2412 of the old record, the article entitled "Armed Employes Resented in Hartford Valley."

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Armed Employes Resented in Hartford Valley.

Ft. Smith, Ark., Nov. 20.

The arming of the non-union employes with high power rifles and supply them with a large amount of ammunition when they were sent down into the Hartford Valley to begin work at the Bache-Denman mines at prairie Creek Fri-

day is being strongly protested by officials of the miners' union and the citizens of the Hartford Valley.

In a statement to the Southwest American last night, Roger B. Hull, special assistant to the Attorney General of the United States, who is in charge of the special grand jury investigation of Prairie Creek troubles, said that he considered the arming of the non-union employes an unfortunate incident and that it was a mistake. Mr. Hall said he did not know the men were armed and that after officials of the government learned of the incident an order was issued for the men to turn over to Major N. F. McClure, in command of the United States cavalry at Prairie Creek, their guns and ammunition.

The men employed by Federal Receiver Bache went
2456 from Fort Smith to Prairie Creek in wagons. The Federal guards appointed by United States Marshal Parker, who was so authorized by Federal Judge Frank Youmans, went to the mining district by railway. The employes were supplied with rifles and boxes of ammunition, which a number of persons declare were broken open in the bed of the wagons. It is said that some of the shells were secured by cavalrymen when the wagons reached the camp.

Union officials declare that the miners and citizens of the Hartford valley have no fire arms of any sort, and that sending armed men into the valley was one of the things which started trouble in the first place.

Emphatic denial is made and exception taken to the alleged statement that there are 3,000 high power rifles in the hands of miners and citizens of the Hartford valley. K. C. Adams, national publicity agent for the United Mine Workers, declares this latest matter will be taken up officially by the union. Adams declares he put the matter up to Mr. Hull and declares that Mr. Hull said that although he had nothing to do with the Receiver's employes, in his opinion the men were justified in taking arms with them when they went to Prairie Creek, as the citizens and miners were armed.

Mr. Adams declares that Major McClure took the initiative in disarming the employes and taking charge of their guns and ammunition; that Major McClure did so without any official notice from the Federal officials at Fort Smith. 'Mr.
Bache, as Federal Receiver, is an officer of the court,
2457 acting under the instruction of Judge Youmans, and is responsible to the court', said Mr. Adams, 'and the officials of the union are waiting to see if this seemingly un-

authorized and inflaming action on the part of Bache will be taken cognizance of by the courts.'

The attention of Judge Youmans was called Saturday to the fact that squads of employes sent to the valley under the authority of the court receiver, were armed with guns and supplied with ammunition. Judge Youmans said that no such authority had been given the Receiver, and that he was advised that commander McClure had taken possession of the guns and ammunition.

In issuing the order for operation of the mines in response to the recommendation of Receiver Bache, the court order carried only one presumption of authority for protecting the proposed employes and property. Specifically that power was placed with the United States Marshal, who was empowered to appoint necessary deputies, who, in protecting the Receiver in carrying out the court order, were to be assisted by the United States military force, now stationed at the mine camps."

Mr. Drinker: From the Journal of the 3rd of December, 1914, editorial "Resistance to Lawlessness", found on page 2406 of the old record.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Resistance to Lawlessness a Duty.

The situation in the Prairie Creek district of Arkansas
2458 is the logical sequence of the program that is being carried on by the employers of labor all over the country who happen to have disputes with their employes; we mean the program of importing bad men as soon as any signs of trouble become manifest; to encourage such hired thugs to commit overt acts against the workers on strike, or whom, as in the case in point, they have locked out.

It appears as if all of our institutions for the enforcement of law have proven inadequate, have completely broken down when attempts are made to handle these private armies of the employing classes. Outrages have been committed by them, openly, and to the knowledge of the supposed officers

of the law, but so far as we have not heard of an instance where either they, or any of their employers, have been handled by the law.

We have the record of a federal grand jury, reporting that men in the employ of, and responsible only to the operators of Colorado, even prior to the strike, absolutely controlled the camps around the coal mines; administered and enforced the will of the operators, or local managers in lieu of, and often in open defiance of the law.

We need not mention here the outrages committed by these hired bands of murders during the strikes in Colorado and in West Virginia. The miners all over the land have heard, and in our opinion have determined that if, as seems evident, there is no law in this land to protect them from the depredations of the hired gunmen, then it is their sacred duty to themselves, to their families, and finally to their country, to
2459 resist this usurpation, by force, of the powers of government; the subversion of all government to the will of those who are able to hire such force.

With the lessons of Holl[illegible]rove, Ludlow, the Calumet outrage, where seventy-two innocent children attending a Christmas tree entertainment were intentionally murdered, in order that terror might be driven into the hearts of the fathers who were on strike, before them, the men of Arkansas saw the same lawless force ready, at the command of the operators who sought to destroy their organization, and in defense of the free institutions of their state and country all classes of the citizens of the Hartford Valley joined hands to drive out the Hessian army, that experience had taught them held themselves above all laws; and whose assumption of being above law seems to be justified by the fact that, so far, neither state nor federal government have taken steps to curb, or to punish.

We deplore violence, but have no words of condemnation for men who join together to resist lawless and unchecked force."

Mr. Drinker: From the United Mine Workers Journal of the 8th of June, 1911, page 4, under the heading "Personal Notes".

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading): "President Stewart and Board Member Mullen of District 21 called at the headquarters last week to consult President White relative to the strike
2460 at Spadra, Ark."

Mr. Warrum: That is 1911?

Mr. Drinker: Yes, sir. I have marked in these books, which are Exhibits 7, 8, 9, 10 and so forth, with a pencil, the passages on the following pages, which I will give to the reporter, and wish to consider as in the record, without reading them.

Mr. Warrum: I wish you would state what it is.

Mr. Drinker: The first is Exhibit 7.

Mr. Warrum: If the court will permit me to ask Mr. Drinker a question—if you will say this is from joint convention proceedings, or joint conference proceedings, that is all I ask.

Mr. Drinker: From the joint conference proceedings of the Southwestern operators and miners, which were introduced by Mr. Manuel. They are all to go in the record without reading.

From the proceedings of July 12th, 1904, which is Exhibit 8, the following passages as marked with a pencil in this exhibit.

Mr. Warrum: To this offer the defendants separately object for the reasons heretofore given with reference to the introduction of proceedings and extracts from the joint conference proceedings and debates, and that they can only be introduced under the theory of this complaint on the ground that they are declarations of co-conspirators, and the president of the plaintiff company testified, at the close of his evidence, that he participated in many such as a co-conspirator.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: On page 5, to show that T. L. Lewis was
2461 International Vice President, and was present.

Mr. Warrum: To save time, with permission of the court, I will ask that my objection can be noted by the stenographer to each offer, and the ruling of the court may be the same, and my exception, and then I will not interrupt.

The Court: Very well.

Mr. Drinker: From page 13 of the proceedings of July 12th 1904, Exhibit 8.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Mr. Richardson: It is also understood that the District Presidents and Secretary-Treasurers, the National Vice President and the National Board Members are ex-officio members of our committee."

Mr. Drinker: From page 57 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Mr. Peter McCall, Kansas: ..... He said the reason the reduction was asked in the east was on account of competition with non-union coal. Does he not know that today the coal from Colorado, in spite of his efforts, is coming into Kansas and the Territory? Does he not know that non-union coal from Alabama is coming up into Arkansas and
2462 the Territory from Memphis and taking their trade."

Mr. Drinker: From page 114 of the same proceedings.

Mr. Warrum. The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Whatever may be the competition between the coal mined in this territory, it is nevertheless true that, so far as Arkansas and Indian Territory are concerned, they do come into direct competition with Alabama coal, principally at Shreveport and points reach from that town by railroads that diverge from it. It is true that in Kansas City today, and in all the markets north of that along the Missouri River, the coal mined in the territory we are trying to form a scale for comes into direct competition with coal mined in Iowa, where the miners and operators have signed for this year a

scale lower than the one we are presenting to you. It is also true that Missouri coal and part of the coal from this territory where we now stand comes into competition with the Iowa coal and the Illinois coal, for we all reach the big towns along the river. The Illinois coal today, mined on a scale which we have tried to copy, so far as its prices are concerned, comes to the very doors of our mines in Missouri and is being sold now at a town within seven miles of one of the mines we are trying to make a scale for here today. Illinois coal reaches all the territory north of our mines that we reach, and again on the east of us via the Chicago and Eastern
2463 Illinois Road, which is now a part of the Frisco system, and comes into direct competition and will be burned in the engine of the Frisco road this year, where the coal from Cherokee and Crawford Counties, Kansas, was burned last year. (Perry.)"

Mr. Drinker: From page 117 of the same proceedings.

Mr. Warrum: We renew our objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"(Lewis) There is a natural market for every mining district, a market that belongs to that district; and whenever another district is attempting to invade it they are doing something they ought not to do, and something they should not be permitted to do."

Mr. Drinker: From page 129 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(Hanraty) The freight rates from Indian territory, Alabama and Arkansas more than overcomes the cost of production. The Texas operators are in a better position right there in the Texas coal fields, within eighty miles of Fort Worth, and I am satisfied the freight rates from Fort Worth are such that he can come in competition with Alabama, Arkansas, Indian Territory, Colorado, or anywhere else."

Mr. Drinker: From page 147 of the same proceedings.

2464 Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(Mr. Britton) Competition in the old time was the life of trade; but we have got it right in the neck and we know it, for competition when brought right down to bed rock ruins trade. I can tell you all there are some of the biggest illegal trade combinations in this country today we have ever had. What about the Standard Oil Company? They are a close corporation and they are holding their own and swiping it off the American people whether [teey] like it or lump it. The sooner we, as representatives of the operators and miners, realize what we are up against the better for us. The day is past when one man can cut-throat another. The sooner the operators realize that fact the better for the miners. It is all right enough for the operators to stand up and tell us they haven't got it in their hands; but I want to tell you I know different."

Mr. Drinker: Page 180 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Mr. Hoye: Of course there is a strike on in Colorado. I shall say further that that strike is going to continue to be on. It will be supported and well supported, and that battle is to be fought to a finish. If you imagine the opera-
2465 tors out there can successfully operate their mines and compete with you in the face of that great labor trouble, I think you are mistaken. It is ridiculous to think they can. I think their competition will not trouble you much in the future. I think they will be pretty well occupied fighting the labor troubles they have now, and that they will have for some time. It will be a hard matter for them to get efficient labor, and without efficient labor they cannot compete in the markets."

Mr. Drinker: Page 297 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"(Britton) Competition ruins trade, and you can't get away from that."

Mr. Drinker: Page 363 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(Perry) Take the question of competition in District 21, and that coal, so far as all the mines along the Choctaw, Oklahoma and Gulf Railroad are concerned, and so far as all the mines on other roads are concerned, come into direct competition at Memphis with Alabama coal. It comes in direct competition with Alabama coal at Freeport and all the other markets in Western Louisiana and Eastern Texas. More
2466 than half the coal mined in District 21 goes south into Texas and Louisiana markets—at least that is the fact so far as our mines are concerned."

Mr. Drinker: Page 371 of the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(Lewis) I have listened with a great deal of interest to Mr. Perry, and other representatives of the operators, and I recognize a great deal of logic in the statements that he has made from time to time on behalf of the operators in our conference. I agree with him that competition has been, is now and always must be considered a factor in arriving at final conclusions in joint conventions between operators and mine workers. Competition has its bearing on our present deliberations. I am not going to attempt to dispute the statement made by Mr. Perry that they lost a contract of 100,000 tons of coal to Illinois. I might with just as much force say that Ohio has lost a contract to Indiana or Pennsylvania, or any other of our neighbors in the same movement, of two or three or four hundred thousand tons of coal. I know that they have lost contracts aggregating thousands of tons. It is true at times these contracts are lost because of the fact that the man who is buying coal can buy it to better advantage from one producer than he can from another. This is where the factors of competition comes in.

2467 I might say to our people on this side of the house that if you could go down [—] street and buy a bushel of potatoes in one store for a dollar, you would not be apt to go across the street and pay $1.25 a bushel for potatoes of a like quality."

Mr. Drinker: Mr. Perry being an operator, Mr. Hanraty being a miner, Mr. T. L. Lewis the International Vice President of the Miners; Mr. Britton a Texas miner, and Mr. Hoye a miner.

Now, from the proceedings of February 23rd, 1910, being Exhibit No. 7, at page 57 to 68.

Mr. Warrum: Defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"The Southwestern Interstate Coal Operators' Association, in voting against the Miners' proposition, feel that the Miners should fully understand the reasons why we cannot comply with their request.

If it were simply a matter of paying the wages demanded and being able to get it back by raising the price of fuel to the consumer, the operators might not be so insistent that there should not be an advance, but the facts in the case are that any advance in the cost of mining coal could not be regained through higher prices for fuel. The competitive conditions that generally prevail throughout the entire territory in which the operators of the Southwest are marketing their coal are such that it would be absolutely suicidal, not only to the coal operators, but to the miners as well, to pay the
2468 increase demanded.

The coal industry has just passed through a period of eighteen months depression, and while the rates paid under the 1908 scale are the same as those paid under the 1906 scale, the earnings of the men under the 1908 scale have been materially curtailed by reason of lack of volume of business on account of said depression.

The discovery and development of vast fields of oil and gas has affected the price of coal from Omaha to the Gulf of Mexico. It is a fact that fifty-one per cent of the steam in Kansas City is now being generated by oil, and oil is largely displacing coal at Kansas City, St. Joseph, Topeka, Wichita and in the territory embraced within those lines, to say noth-

ing of the situation with oil and gas in Oklahoma and Texas. The domestic coal scales have fallen off fully forty per cent through the use of gas; practically the only coal that is being marketed for that purpose now being a little storage coal, which is kept on hand for use in the event of failure of the gas on account of extra changes in temperature.

The lack of a market for the Oklahoma oil and the price of same is a menace today to the entire coal situation, there being at this time something in excess of 50,000 barrels of oil in storage in Oklahoma, which is sufficient to displace 16,666,000 tons of coal, which is equal to more than the entire annual production of the four states embraced in this movement. A further curtailment in the consumption of coal will follow the completion of pipe lines to carry oil and gas
2469 from the various fields to such important markets as Little Rock and Dallas, which lines are now being constructed.

In addition to the oil and gas competition, we find that the coal produced in New Mexico and Colorado, non-union mines has come as far east as Oklahoma City, within a short distance of our mines, displacing thereby the product of Oklahoma mines.

In 1906 a definite promise was made to the operators of the Southwest that the Colorado field would be organized. This has not been done, and the Colorado and New Mexico coal has further encroached on our territory since that time. The coal from these two fields is displacing coal produced in District 21 in Fort Worth and territory west thereof. A vast amount of lignite coal is being mined in Texas by non-union labor, and this coal is [beig] sold to such points as Cleburne and other central Texas points at a lower delivered price than the freight rate from Arkansas and Oklahoma, which has resulted in the waste of a great amount of slack coal, which has been unable to find a market. This is a matter of personal knowledge to every coal miner working in the Arkansas field.

Illinois coal, the mining price of which is not based on competitive conditions with our coal (as in the past our rates have been increased on a percentage basis rather than on a tonnage basis), has been displacing the production of coal in Missouri, Kansas and Arkansas, Illinois coal coming down and taking business at Little Rock, Texarkana and points south, forcing the Arkansas coal back within a short distance of the Arkansas mines.

2470 Non-union Alabama coal has displaced the production of coal in District 21, coal from that field being sold at Shreveport and all northern Louisiana points, and taking all business east of Lake Charles, Louisiana. At the Gulf Coast points, such as Galveston and nearly interior points, we find that a vast amount of Arkansas and Oklahoma production is being displaced by coal mined in the West Virginia non-union fields, shipped by water.

Illinois coal has encroached to such an extent upon Missouri mines that the mines at Huntsville are shut down for the reason that lump coal can be delivered on track at Huntsville, Missouri, from Illinois, at lower price per ton than run of mine can be produced at that point. 1,000 tons per day formerly taken by the Wabash Railroad from Huntsville mines is now being supplied from Illinois.

We also find that non-union Colorado coal is coming east into Kansas, driving the Kansas product closer to its source of a line drawn north and south through Wichita, and at the present time there is a suit being brought by the Railroad Commission of the State of Kansas before the Interstate Commerce Commission, praying for a lower basis of rates from Colorado, which will cause the Colorado coal to come further east, displacing thereby a further large amount of Kansas production.

2471 In 1893, the Kansas coal mines supplied the Frisco Railroad Company, or the old Kansas City, Fort Scott & Memphis Railroad Company, with coal as far south as Jonesboro, Arkansas, and today Kansas coal is only being carried as far as Springfield, Missouri. We have been definitely told that unless we can make the necessary price, that there will be 240,000 tons per year more Kansas coal displaced in Springfield itself, with Illinois coal.

In the last few years, the railroad companies have been gradually drifting to the use of oil on their locomotives. The Frisco, Rock Island, Kansas City Southern and Santa Fe have today over 500 oil burning locomotives in service which heretofore used coal from the Southwestern mines; and, further, on account of the biennial suspension of mining, they are contemplating changing more coal burning engines to oil burners, as they figure with the present price of oil and the present price of coal, that it is cheaper to burn oil than it is to burn coal, and that they can save considerable money in stocking coal to take care of their needs during our troubles every two years.

We wish to call [aprticular] attention to the conditions that exist in the various fields as to production, as shown by the United States Geological Survey in their report for the year 1908.

There was produced in Missouri in 1903, 4,238,000 tons, and in 1908, 3,317,000 tons, a decrease of 921,000 tons. In Arkansas, in 1903, they produced 2,229,000 tons, and in 1908 2,078,000 tons, a decrease of 151,000 tons. In Oklahoma, there was produced in 1903, 3,517,000 tons, and in 1908, 2,948,000 tons, a reduction of 569,000 tons. In Kansas, in 1903, there was produced 5,839,000 tons, and in 1908, 6,245,000 tons,
2472 an increase of 406,000 tons, the only state in which an increase is shown.

From competitive states, we wish to call your particular attention to the situation in Illinois, where we claim the mining rate is not on a competitive basis with our own. The production in 1903 was 36,957,000 tons, and in 1908 47,659,000 tons, showing an increase of 10,702,000 tons. In Colorado, in 1903, there was produced 7,433,000 tons, and in 1908, 9,634,000 tons, an increase of 2,211,000 tons.

In New Mexico in 1903, there was produced, 1,541,000 tons, and in 1908, 2,467,000 tons, an increase of 926,000 tons. In Alabama, the production in 1903 was 11,654,000 tons, and in 1907 it was 14,250,000 tons, an increase of 2,596,000 tons. In Alabama, for the year 1908, the production was 11,604,000 tons, on account of the strike in that year. The production of Kentucky, which comes in competition with Arkansas coal on the Mississippi River and west thereof, was for 1903, 7,538,000 tons, and for 1908, 10,246,000 tons, an increase of 2,708,000 tons. In Texas the production was in 1903, 926,000 tons and in 1908, 1,895,000 tons, this increase of 969,000 tons being due to the fact that a great many non-union lignite mines have been develcped since 1903. In West Virginia, the production in 1903 was 29,000,000 tons, and in 1908, it was 41,000,000 tons, being an increase of 12,000,000 tons.

In other words, the production in nearly all of the states which are competitive with us has increased, as against a falling off in all of our territory, with the exception
2473 of the state of Kansas. This small increase is more than offset by the decrease in other states, so that in the four states embraced by this movement, there was a net decrease of 1,235,000 tons. The total production of coal in the United States in 1903 was 357,000,000 tons, and in 1908, 415,000,000 tons, a total increase of 58,000,000 tons, while

during the same period we have made a decreases, which is the only decrease shown in any district in the United States.

At this point we desire to call your attention to the following figures quoted from the report of the United States Geological Survey, to the effect that the districts embraced in the four states produced in 1903, 15,824,000 tons and in 1908, 14,588,000 tons, a decrease of 1,236,000 tons. We also desire to call your attention to the fact that during the year 1898, the same states produced 8,680,000 tons, as against a production of 15,824,000 tons in 1903, being an increase of 7,144,000 tons.

In other words, the percentage of increase under non-union conditions existing between 1898 and 1903 was 85.33 per cent, and during the five years under the agreement, the tonnage not only failed to hold its own, but has fallen off, as shown, 1,236,000 tons, or 8.4 per cent.

This is due entirely to the fact that the scale in 1903 was made without due consideration to competitive conditions in other fields, and the percentage of increased cost has been so great that it has put the operators in a position where they cannot take business, and the result has been loss of work and less tons produced.

2474 Take the situation at Alderson. The cost of coal at Alderson was $1.13 in 1908, prior to the agreement with the United Mine Workers, and today the cost is $2.70 per ton. At Bonanza, the cost in 1898 was 96 cents per ton, and today it is $1.73 per ton.

During the non-union period from 1898 to 1903, many thousand tons of coal were shipped from Oklahoma and Arkansas into the Republic of Mexico, and even as far south as the City of Mexico, while, under present union conditions, for several years past, not a single pound of coal has been shipped to that territory.

In the non-union period prior to 1903, we shipped a large tonnage to Houston, Galveston and Port Arthur for export and steamer use, and the entire state of Texas drew its entire supply of fuel, with the exception of one mine in Texas, from Oklahoma and Arkansas. Today, under union conditions, we are excluded from the south half of Texas, which is supplied entirely by coal from the non-union fields of Alabama and West Virginia, while the western part of Texas, which we also have lost, is supplied almost exclusively by coal from non-union mines in New Mexico and Colorado.

Between 1898 and 1903, under non-union conditions, the entire state of Oklahoma, then Indian Territory, was supplied by mines located in Indian Territory. Today, under the union, the western half of Oklahoma, even as far east as Oklahoma City, is now very extensively supplied with non-union coal from Colorado.

2475 Before we agreed with the union, the entire state of Louisiana, except that portion east of the Mississippi River, was supplied with coal from Arkansas. Now, that territory is supplied with coal from southern Illinois and from the non-union mines of Alabama.

Prior to our agreement with the United Mine Workers of America, the entire state of Arkansas, and all the railroads in it, were supplied with coal from Arkansas mines. Now, practically no union coal from Arkansas mines is used east of Little Rock. The Iron Mountain, Cotton Belt, and practically all other railroads and users of steam coal in the eastern half of Arkansas, are using Illinois and non-union Alabama coal.

We know that a further increase in the cost of mining in our territory would mean such a great falling off in our tonnage, that in effect it would mean the destruction of the value of our properties, and even with the fourteen per cent increase in wages, would result in a marked reduction in the revenue of the men at the end of the year. Our scale at the present time is higher than the scales of the surrounding competitive fields, and on account of this, and the competition of oil and gas, we are forced to decline your demand, and we have offered you the very best we can.

I might say that in the last eighteen months we have not been running the mines to their full capacity, as was the case up to three years ago.

I now want to draw your attention to this map, which relates directly to this matter of competition and pro-
2476 duction. The black spots represent the coal fields which are competitive with the southwestern states, that is the Colorado and New Mexico bituminous fields. The cost of producing coal there ranges from 75 to 80 cents a ton. If there is any man here who disputes that, I would like to have him do it now. I have visited these mines and know what the conditions are. The miners are paid on the basis of 2400 pounds a ton, not 2000 or 2240, but 2400. These mines are favored with very favorable conditions, and can produce

at a very low figure. If they were to pay our scale, the cost of production would be very much lower than ours, because the coal veins are high, dry and above the water level. There are very [—] shafts being used, and very few cases where they are subject to explosion. These two spots here (indicating on map) represent the lignite field. The lignite fields of Colorado Springs and Boulder are competitive with Kansas coal. These spots here represent the lignite districts of Texas, which are now producing about 800,000 tons of lignite by non-union labor, costing at the mine about 80 cents a ton. This field represents Oklahoma and Arkansas. There is the Henryetta district, Tulsa, and here is the Kansas field, Missouri, the Bevier district, and here is the northern Illinois field, which is scarcely competitive. It was put in here for information, more than anything else. Here is the central Illinois field, which is highly competitive. That represents the central Illinois field, producing coal at a very low figure, the rate there is much lower than our rate. This field represents the Kentucky field, where the cost of producing
2477 does not exceed 75 cents. Here is the Alabama district. Here are two non-union fields, likewise the lignite, competitive with the west.

Prior to 1898, from records that we can very readily satisfy you are correct, coal from the four states of Missouri, Kansas, Indian Territory, and Arkansas was shipped into the territory shown in red here, which I will refer to later again. Since that time, within the last ten years, the market has been contracted so as to cover only the territory shown in blue. There is coal shipped from Illinois into this very territory now, which we don't make any reference to in this statement, but the outline of the blue represents a substantial market for the products of the four states embraced in this movement."

Mr. Drinker: From the joint conference proceedings of the 12th of April, 1912, being Exhibit 4, pages 68 to 71 as marked, beginning with "The Chairman", and ending with the signature.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"The Chairman: Gentlemen, come to order. This is an adjourned meeting, to have met on last Thursday the 28th, but not being able to do so the meetings were adjourned from

day to day until this morning. We are now here for the purpose of giving you gentlemen the required answer which you desired from us, at our former adjournment and after consideration and deliberation we have prepared a doc-
2478 ument which we will read here this morning, and are prepared to give each one of your district presidents and Mr. Farley, representing the National Board, a copy. Mr. Keith, will you be kind enough to read the proposition?

Mr. Keith (reading): 'We offered to adopt last year's contract (which we hereby renew) with a machine scale for all districts for loading of 66-2/3 per cent of the tonnage scale. We have shown you conclusively (at least we assume it was shown conclusively, as you have made no reply) that by reason of the competition of non-union coal from Alabama, Colorado, New Mexico and Kentucky, and lignite from Texas, in addition to oil and gas, and cheaply produced union coal from Illinois, we are unable to pay any advance. This competition makes it impossible to find a market for our coal at the advanced price which your demands would necessarily require with the certain result that we would be compelled to shut down our mines permanently, and you would find it necessary to move away from this section of the country to fields which are not suffocated by unbearable conditions, in order to earn a living for yourselves and families.

This conclusion is not the outcome of any hasty discussion amongst us. We have, in meeting after meeting, during the past several months, reviewed the subject thoroughly, and it is the unanimous judgment of the operators that they cannot pay an advance and operate the mines except with the certainty of an early bankruptcy.

We have from time to time entered into contracts with
2479 you gentlemen, representing the U. M. W. of A., only to find those contracts, which by their terms provided for certain compensation to your members, have been, with very great frequency violated by your members and officials, and to such an extent that the cost of producing our coal has, during the existence of the contracts, been enormously increased and as the direct consequence of your violations of the clear and unmistakable terms of the agreement. Many arbitrary conditionse and expenses have been imposed on us in violation of the contracts, which were of no material benefit to your members, but which have largely caused the great increase in the cost of our coal, and made us lose more than half of our natural and legitimate markets to non-union produced [fuelds].

By practically depriving us of all authority in the management of our properties, you have brought about an almost total lack of necessary discipline to such a degree that mining in this section has become a much more hazardous occupation than formerly with numerous accidents and fatalities, for which the courts hold us legally responsible and assess against us heavy damages, and these same dangerous conditions prevent us at times from getting sufficient miners to operate our properties.

In many instances we have been compelled to hire men whose employment was entirely unnecessary.

Furthermore we have made contracts with you in good faith and in a few months have found you influencing the legislatures of the state to pass laws to make it illegal for you to do the very things you had expressly, and as we thought,
2480 in good faith, contracted to do.

We have offered to arbitrate our entire relations with you by arbitrators to be appointed by the President of the United States on our joint request, but you have refused to join in such a request or to submit to such an arbitration.

Notwithstanding all the foregoing and the many other arguments we have advanced to you, we wish it to be understood that we are not now taking an arbitrary stand. We are willing to consider, and will consider, with all the earnestness and attention that it may merit, any proposition you may make to us. But we must positively insist as an absolute essential to acceptance that the proposition submitted shall contain in full detail each and all of your demands; that it shall not directly or indirectly have the effect of increasing the cost of our production over the cost under the contract of last year and that it embody some practical and legally enforceable means by which you make yourselves substantially responsible under the law for any violation of the terms of any contract we may enter into with you. This has not been the case in the past, and we have suffered beyond measure from its absence.

(Signed) JAMES ELLIOTT.
President Operators' Association."

Mr. Drinker: That is all from these proceedings.

Now, from the proceedings of District 21 convention, United Mine Workers of America, February 17th, 1914, held at Ft. Smith, on page 53,—

Mr. Warrum: Now, this is a little different, and the
2481 defendants desire to renew their objection.

The Court: Let it go in.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: So much of the credentia committee's list on page 53, as shows the following being present as delegates, and I will read the local number, the place and the delegate:

| | | |
|---|---|---|
| 1526 | Hartford | James McNamara. |
| 1565 | Midland | Charley Bumpus. |
| 1842 | Greenwood | William McLachlan. |
| 1912 | Hartford | Pete Stewart. |
| 2110 | Midland | A. F. Howard. |
| 1026 | | Pete Hanraty. |

And the following passages as marked on pages 56 to 57, from the report of President Stewart.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"At no time in the history of our organization should our membership stand more solidly united than the present. For the past year large corporations from the east, and also from Europe, have had representatives in Arkansas and Oklahoma, trying to secure options on coal lands. The cause of which is the claim that the Panama Canal, which is nearly completed and will be opened in 1915 for navigation, together with a direct railroad line from Arkansas and Oklahoma, which
2482 it is claimed will give the coal fields of District No. 21 a decided advantage over other competitive fields, and than an especially excessive coal business will be had in this field supplying fuel for steamships. And in addition quite a foreign trade is being looked for. Another feature is that our district has been badly handicapped for years an account of the law price of fuel oil, which has now advanced to such a figure that this character of fuel can no longer be used in competition with coal. As a result of this condition the railroads are rapidly dispensing with the oil burners on locomo-

tives, as well as large industrial plants who have been unable to meet the increased price of fuel oil. The passing of the oil supply has of course increased the consumption of coal, and the territory embracing our district at the present time indicates that the increase will continue for some time to come, for practically all of the present industrial plants now burning oil will within a short time have returned to coal."

Mr. Drinker: From page 58 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"Another matter that favors us in the continuation clause is the fact that the scab mines in the non-union field of southern Colorado and Alabama are working only about half time and are praying that we stop work on April 1st, so they may work full time and finish taking the balance of the con-
2483 tracts of our district."

Mr. Drinker: From page 61 as marked, from the same report.

Mr. Warrum: The defendants renew their objection

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"That as soon as a suspension of mining comes in the organized fields, the non-union miners of Southern Colorado and Alabama immediately start filling our contracts and then when we get a contract we have no work and the non-union fields are filling the contracts that belong to us."

Mr. Drinker: From page 71 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"There is also a new field to the north of Henryetta on the Frisco railroad to which I want to direct your attention, which is known as the Tulsa and Catelea fields. Located in this

field is a very extensive area of coal land. We have had local unions there from time to time, but nothing of a permanent structure. The mines have generally closed down in the summer, but there is being developed permanent mines in that field at this time, and an organizer has been sent into the field to organize and establish an organization that will be permanent, in order to try if possible to have this field, both operators and miners, represented in our next joint con-
2484 ference, as this field is going to be a great competitor of both the Henryetta and Kansas coal fields, and I believe that we will be forced to call a strike to bring into line certain operators in this section. and in the event that we do, that we fight such a conflict to the bitter end; that we never give up until we have established an organization or permanency and satisfactory contract regardless of the cost."

Mr. Drinker: From pages 73 and 74 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

"During the past two years we have been confronted with what is known as local strikes, in violation of the agreement, whereas our members have closed the mines down, without ever taking the case up with the district officials as provided for in the agreement, and in nearly every instance of this kind members of our organization have been fined for the violation of the terms of agreement.

When these fines are assessed against our members, the result creates a great deal of dissatisfaction among the thinking members that are involved in these shut-downs, and who wish to continue at work and respect our joint agreement. We have arrived at a period in our joint wage agreements where there is no necessity for actions of this kind, and they always result disastrously to the members affected;
2485 in fact I cannot recall a single instance where this method has accomplished any good

While there have been a number of strikes called by the district president, they have only been called after the flat refusal of the operators to live up to the agreement or written decisions, and in every instance the arbitrator has decided in our favor to the extent of one case at the Bache-Denman

mine, the operators were fined between four and five thousand dollars for refusing to comply with the joint decision.

The convention cannot too strongly condemn the members and mine committees for closing the mines down in violation of the contract, as we have an agreed joint method of settling disputes, and when we enter into an agreement we should do our utmost to carry out the provisions of same, for in the non-union fields this practice is the only contention that the operators make against the organization, namely, that we sometimes close the mines down in violation of the agreement, and if these violations were stopped, it would be a long step towards maintaining the dignity and integrity of our organization."

Mr. Drinker: From page 78 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Prior to the calling of the Colorado strike I was requested by Vice President Hays of the national organization to render the national body all possible aid in organizing the unorganized coal miners of that state, preparatory for the con-
2486 flict that was to come.

Realizing the bearing that the result of this strike would have upon the future progress of District No. 21, I appointed with the consent of the executive board, and sent into the field four organizers for a few months. The result of this joint co-operation was indeed gratifying to the officials in charge of the strike, for when the strike was called ninety-five per cent of the coal miners of that state responded to the strike call.

The assessment levied by the national organization to support the strikers met with great favor with the rank and file of District No. 21, there being only twelve votes cast in opposition. In addition to the assessment many donations have been made by local unions throughout the district; there has also been received many donations from business men and institutions located in the mining towns throughout the district."

Mr. Drinker: From page 98 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

| | |
|---|---|
| "Organizers, Jamestown | $ 414.89 |
| Donation West Virginia strike | 10000.00 |
| Organizers, Colorado | 3577.10" |

Mr. Drinker: From pages 101 and 102 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants,
2487 and each of them, at the time duly excepted and still except.

"After clearing the wreckage from the Oklahoma campaign and rejoicing in our victory, we learned that a great conflict had begun in our sister state on the west, namely, Colorado. The strike is one which we have been almost praying for for the past ten years, on account of the great inroads the cheap non-union coal has been making upon our markets for some time.

About the time this conflict was brought on we were appealed to by the national officers to give them what assistance we could in making that strike a success. Knowing, as we did, what a success or failure of that strike meant to our district we immediately dispatched four men to that field to assist in that work, and on December 13th, at the request of President Stewart, I visited Colorado for the purpose of attending the State Federation of Labor convention called to meet in the city of Denver on December 16th. President White had previously requested all the southwest districts to have representatives at this convention, and in company with President Howat of Kansas, and Vice President Steele of Missouri, we landed in Denver on December 15th and attended the convention on the following day. There were over 500 delegates from the various trades and labor organizations in the state in attendance at this convention, and was one of the most militant conventions it has ever been my pleasure to attend, comprising a body of this kind. The various labor or-

ganizations of that state, knowing from past experience
2488 the methods used by the coal corporations in suppressing organization work in that field in the past, gave their unqualified pledge to support our fight to the bitter end. But I saw there the same thing confronting the striking miners that is found in every state in the union where a strike is incurred. I saw a tool in the hands of the coal corporations sitting in the governor's chair ready to do the bidding of these companies at their beck and call. I saw this same governor ordering the state militia into the coal fields to shoot down the striker as is customary in these controversies.

On December 17th the convention marched in a body to the capitol, headed by that great and noble white haired woman, 'Mother Jones', and there demanded the governor to set forth some reasons why he was allowing the militia to carry on the dastardly work which they were doing at that time in the southern field, but his explanation was too feeble to even be given a moment's consideration by the most reactionary delegate to that convention, and we departed in disgust.

From Denver I visited the southern coal fields, and made several talks to the striking miners, and in all my experience I have yet to find a more militant, self-sacrificing, determined bunch of striking miners than I found in the tent colony of the southern coal fields of Colorado; notwithstanding the fact that the snow was practically four feet deep on the level, it did not deter them or their wives and children in the least, and some of the camps where as many as 1,200 men were
on strike, you can only find where one or two had de-
2489 serted the ranks. This is a fight that is well worth while for this convention to give careful consideration, because we realize what an obstacle it has been in our way in the past ten years, and we do this we can but realize what it means to us if the strike is lost and the men are compelled to go back to the same miserable conditions under which they have worked these many years. We have the further promise by our present international officials that if this strike is won they then intend to give us the relief we have long looked for in the coal fields of Alabama, and we cannot conscientiously hope to gain many more great advantages in our own field until we have secured this relief, and for this reason we must not as, long as it remains within our power, see these men lose the fight they are now waging in Colorado."

Mr. Drinker: On pages 105 and 106, enough to show that P. R. Stewart was president, and William McLachlan was Board Member from Sub-district No. 3.

From pages 109 and 110 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Colorado Organizers Sent From District 21—

| | | |
|---|---|---|
| | B. F. Clevenger, slaray | $273.80 |
| | R. R. and other expenses | 395.00 |
| | Andy Ganz, salary | 280.80 |
| 2490 | R. R. and other expenses | 258.95 |
| | Don Vietti, salary | 253.50 |
| | R. R. and other expense | 324.70 |
| | Sam Carter, salary | 308.10 |
| | R. R. and other expense | 324.10 |
| | Joe Isherwood, salary | 148.20 |
| | R. R. and other expense | 122.15 |
| | | 2,701.75" |

Mr. Drinker: From page 183 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Delegate Gomer Jones: The delegates will please turn to page 38, and on page 38 there is a resolution.

(Reading): Local Union 1170, Chant, Okla.

Whereas, After a careful investigation of all the facts concerning the mines at McCurtain, Okla., in which every phase of the mining industry, as it pertains to this place, has been thoroughly investigated by a committee and President Stewart, we are of the opinion that McCurtain should be put in line with the mines in the Arkansas field, as the coal comes in competition with Arkansas coal.

And as we believe in the policy outlined by President White, Vice President Hayes and Secretary Green, that these mines should be put on a fair competitive basis. Therefore be it

Resolved, That this convention instruct the district board to formulate a scale for McCurtain based on the Arkansas
2491 field.

(Concurred in by the Committee.)

President Stewart: You have heard the reading of the resolution and the committee's report. What is your pleasure?

Delegate Taulbee: I move that the report be concurred in. The motion was duly seconded.

Delegate Hutchion: By adopting that report, does that mean that McCurtain would have to accept a reduction?

President Stewart: By adopting that report you would put McCurtain on a competitive basis with the rest of the Arkansas field where coal comes in competition with it. It is utterly impossible for the men at McCurtain to work now on account of the competitive relationship."

Mr. Drinker: From page 189 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(President Stewart) We want to be in a position like this: To say that we can show some other mine in this district in case we come on strike, that another operator is paying the same as you, and therefore you can get on to the market and sell your coal and make some on your investment, the same as the other man at the other mine, but if we don't get a weapon of that kind and we have to go into a fight, I don't believe there is anyone in this hall knows more than Delegate Struble what condition we will be in."

Mr. Drinker: From page 190, two paragraphs as
2492 marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Delegate Orr: The statement has been made in regard to McCurtain field, that they enjoy a higher rate for their

dead work than any place in the district. I want to know if they are placed in a position where they are enabled to operate that mine, what difference is it to the miner? I am heartily in favor with the president when he says to put that mine on a basis whereby that operator can complete with the rest of the operators in the states of Arkansas or Oklahoma, wherever the location may be. We all are for a common cause, and these men that have their homes there, have to work there under a condition whereby that coal can be sold on the open market, will be better off than to leave their homes and go into some other field, than to leave their homes and go into some other field in order to obtain employment. (Applause.)"

"Delegate Tilley: I am in favor of putting the operators all on the same basis where they can compete with one another. I will have something to say about our operator later on when it comes time, but that is the reason I am in favor of putting them all on the same basis. If Bokoshe has got a good price they want to keep it, and if McCurtain has got a price so they can't operate the mine they should have a scale out there that they could."

2493 Mr. Drinker: From pages 193 to 195 as marked, from the same report.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Secretary Holt: I didn't want to butt into this argument, but I do want to protect in a measure President Stewart's argument, so far as he has gone with it. I, as your secretary, was called into this from merely a clerical standpoint. I had the opportunity for once in my life to go over thoroughly, over the entire books and accounts of that corporation from the place where they sold the coal to back down to the coal digger that dug it, and we are confronted with something in McCurtain that is more serious than a lot of the members here realize. Now, while I don't want to in any way argue against Brother Struble's amendment, I just want to state the facts, and I want to state them to the delegates so that they can vote intelligently upon this proposition. Brother Winters has told you that it is easy for any man to get up and vote down a proposition to take a small reduction, regardless of how small that reduction might be, but I want to say

on the other hand that it takes a big man in this organization to come before that body of men and try to tell them where and why they ought to take a reduction or a readjustment, as it might be.

Now, I don't like to delve into some of the things that show on the books of the employes at McCurtain, and I am
2494 not going to any more than to say that there was hardly a man drawing pay in McCurtain that his dead work doesn't exceed his tonnage price. That is the thing that the company put square up to us, and I want to ask any delegate here, if he was representing this district organization, and when the operator comes to him and throws his books down, any everything he has on the table, and says, investigate them, I want a contract that I can operate on a competitive basis with any other man in this district, and I am willing to take the highest price, the highest basing point in any part of the competitive field in which I am operating, what are you going to do? I know personally President Stewart for nearly a year, aboslutely refused to meet them on any basis, and of course, their next step was to appeal to the national organization. They wrote up letters, communications, and personally told us they didn't want to operate a non-union mine, that they were the first coal company that signed a contract with us, or one of the first, and they had been in a way instrumental in breaking two or three of the hard conflicts that we had in the southwest, and you can realize what kind of a position it put your board in, and the membership at McCurtain who had, through their intelligence, through their mine committee, and I want to give them credit for that, built up their conditions, and it was a big task for them to have to realize what they had done, and practically agree to readjust some of the things that were in the McCurtain scale. Now, in the face of the facts of these things that are confronting us, and with the entire matter having been thrown into the
2495 hands of a receiver in the federal court, and the national organization telling us that we ought in a measure protect our own interest in Colorado and West Virginia and other places, and not have it go out through the broad land that we have put a man out of business that had offered to pay the highest wage in the competitive field, and that we denied him the right to operate his mine after agreeing to pay it, what kind of a position are you in to go into a fight, if the federal court undertakes to operate that mine? It is all right to get into these fights. We have one on our hands down here, and are begging all the help that is possible. It

is a little, old company that could hardly operate a wheel barrow mine and make a success of it, and we are not able to take care of that, and I don't want very many more of those people to operate in our midst until we can get some of the big fields that we are fighting for, get a contract in those fields, and then we may be in a position to be a little more bull-headed and put others out of business if we can. Now, I don't want to influence any man here, and I am not going to say how you shall vote or intimate, but I want to tell you the conditions as I have learned them myself. Now, the best men in McCurtain, about half of them, almost, have petitioned us over a year ago to allow them to take a reduction in order to operate that mine, and we absolutely refused it, refused to recognize it, and told them to keep their names off those lists or we would expel them from the organization, but it has got right down to where the national organization had taken a hand in it in a way, and the company comes to us in
2496 a way and simply told us that they had to operate that mine on some basis, didn't want to scab, but that if they had to, the federal court had authorized them through the receiver to make a scale themselves that was fair and equitable, and that he would operate the mine. The federal judge said, if those men won't make you a fair scale, make one yourselves, and we will operate the mine. Now, that is one thing you ought to consider in casting your votes. I just want to make it clear, the position we have been in. We have tried to stall this off without letting the rank and file know about it, and we have done the best we could, but we are now up against the proposition of operating that mine, either union or non-union.

Delegate Keissling: We are in this position as to the mine, we don't know, if that case is in the federal courts, there couldn't be no union that could hold against the federal courts of the United States. That is clear to us, and there may be some reduction given to some of these men, but it is better for them to, as the president of our organization has said, and these gentlemen know the situation, and they say that they can't go any further. We are here to discuss what is to the best interest of the men in the district, and if there is a contract of this kind, or a strike of this kind occurs, it means the downfall of the United Mine Workers one step further, when we had this decision handed down to us by a court, and would not accept it. Whenever you fight a federal court in a strike you are up against it."

Mr. Drinker: From pages 195 and 196 as marked, from the same report.

2497 Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"President Stewart: I want to say a word in regard to the amendment. The reason that this resolution—it was drawn up with considerable care on account of the position we are in with the Federal Court. You will realize that as Secretary Hold said we have starved this off as long as we can, and we are in this position, you must either give that company a scale on the basis of the Arkansas scale and the highest rate, or we will go into a fight there, and the reason that this resolution was drafted as it was, the language of it is that there are men in this convention that will be in jail in a week after this mine starts work. There will be a perpetual injunction run on this mine, and especially the two delegates in this convention cannot live in that community under that, because of the fact that we won't give them a fair competitive scale, and when we drew up the resolution it was I could go over there and the —I knew that I would go over there anyway and be one of the victims also, but I would like to be in a position that when I go before the federal court our lawyers can put up an argument that we will have something to go on. I say without being egotistical at all, I believe I can flim-flam any operator in any part of our country in regard to the Arkansas scale if I wanted to do it, because they are awful lot of different scales in Arkansas. There are about a hundred mines and
2498 about a hundred different scales, and it was for the protection of the membership out there. I don't want to see the men in McCurtain that have stayed there since the mine was opened, and I know the men that will go to jail there, and they know it themselves, if a fight starts, and if it does, let's be in a position to fight it intelligently."

Mr. Drinker: From page 222 as marked, from the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"(Delegate Gomer Jones) I want to see conditions altered in that state so that our district executive board can go to the lignite fields in Texas and get them into line so that we

can confront the operators and say we have the whole state of Texas organized. The Texas operator meets us every time we go against them to make a contract with the conditions that prevail on account of the competition of this lignite coal, and we will have to confront them again with the unorganized conditions there, and I still continue in the same position I was at first, that if ever we needed the entire backing of the whole district we need it at this time."

Mr. Drinker: From pages 255 to 259 as marked, from the same proceedings.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants,
2499 and each of them, at the time duly excepted and still except.

"President Stewart: Mr. Chairman, in making my recommendation, the same as I did some years ago, to have a detailed report of our contract for the protection of our membership, I have given the matter a great deal of study since that time on account of diversified conditions of our district, and in making my recommendation at this convention in regard to that particular clause of my report, I thought it would be better now to give you my ideas on this question. We will take for instance now, Russellville, Spadra, Denning, Coal Hill and Paris. I will use this as an illustration. You select a scale committee-man who has possibly worked in some mines in that district, but who has never been around any of the other mines in what you will call that scale district, from which you select your committee-man. In other words, the conditions are so much different in Russellville from what they are in Spadra, or Denning, or Coal Hill, or Paris, that he may be one of the most intelligent members of our organization and he is in no condition to go up and meet the operators and write out a detailed contract and take up your local inequalities, and it was my idea in making this recommendation that we adopt a new system in order that we could help the scale committeemen instead of doing nothing for them. If you select a scale committeeman from that district he should be in a position to know every detail of the work of that particular district that he represents, and also in making a detailed contract you should impose this responsibility on the man who is selected for that purpose.
2500 If you leave this question to the district executive board then he will have no time to put that into effect, because

they will have to visit every mine in order to protect the membership of those mines, and one little mistake on a question of this kind is going to go along ways towards creating a great deal of dissatisfaction and ill feeling in our district. As I believe and know by attending national conventions, that we have got less friction in our district than in any other jurisdiction of the United Mine Workers, as far as internal differences among themselves are concerned, and I thought if you would adopt this method that by this scale committeeman visiting every local union, and if there are two or three mines in that locality, he will go down in these mines and it will take him some time, and some money to do this, but you will gain more by it in the future, because it would be our policy to protect every individual member of the organization, and when you pay a man to do that particular class of work, you will know that it is done right, and the responsibility will be on him to see that every detail of this contract is rightly written. When he visits No. 1 mine he will go over the question with the mine committeeman and get down their details of that contract, and will read it over with the mine committee, and at that time when he is doing that, any suggestions they have to make and any amendments they want to their scale, we will have it there and hand it to the scale committeeman, and when he comes to Kansas City he will come there with a scale that the operators don't know anything about, and that will place yourself in a position a great deal better than we have ever been before, because you
2501 take these things up and discuss them in a convention, and the operators know the details of our contract six weeks before we go to Kansas City. Now, if you would come down to Greenwood and Jenny Lind, Bonanza and Hackett City, Montreal and Midland and you elect a delegate from that field that can visit all of the mines in that field and get every detail of the contract in that field, and it is a pretty hard proposition to select a committeeman in this convention and send him to Kansas City, and he meets the operators from each of these mines, and gets into an argument about some conditions in their mine, and he doesn't know anything about it. How can he know it, now, he has never had the opportunity of visiting these mines to see what the conditions are, and if we have two or three different sub-committeemen up there working, which we always have a general proposition, the committeeman will have to say, I will have to wait until I see Stewart in regard to this condition, but if you give him the opportunity to do this, he will know the condition himself just as well as the man working in that mine, and he will be in a position to put up an intelligent argument and

show why the condition in that mine should be remedied, and when you do that, you will take one of the most advanced steps that has ever been taken by any district under the jurisdiction of the United Mine Workers.

Then you go down to Huntington and Hartford, down the Hartford Valley, and elect a man and he goes down in the mines and does the same thing. Then you go and take Bache, Howell, Sutter, Williams, Bokoshe and McCurtain, and elect a scale committeeman from that district. That will be
2502 four to comprise Arkansas. Then let them go in the various mines in their fields, because like in any other field, when you go to Sutter, you strike a vein of coal that is entirely different from any other [veiw] of coal, with the exception of one mine, and that is the reason I fought so hard against President Lewis at that time, when he gave the Sutter men a reduction, he didn't know anything about the conditions in that mine because the conditions were entirely different from any other mine in the [Arkans] field. It is absolutely a mine by itself, so far as the Arkansas field is concerned. Then you go to Oklahoma and take the Henryetta field. The man that you elect from the Henryetta field should also have a knowledge of what we are going to put into effect in the Tulsa field, because that will become just as large a coal field as the Henryetta field, and we cannot be any too careful in making a detailed contract for that field, because there is one operator we have had to fight for years and years to keep out of business in the Henryetta field who is in the Tulsa field now.

Now, you go down to the Atoka tract, and take Midway. It is only a few miles from Coalgate, but the vein of coal is different. A man might work in No. 5 at Lehigh and wouldn't know anything about Midland, unless he looked at the conditions in that mine. And also take No. 5 Coalgate, he might have worked in some of the mines and not know anything about No. 5 unless he was down in the mine and looker at the physical conditions in No. 5 mine in Coalgate as compared to some of the other mines there, because they use ropes
2503 in the rooms, and there is a condition there at 5 that must be regulated, and if it cannot be done now, it must be by the scale committee. In regard to rooms where they use ropes.

Now, we will go to McAlester, Haileyville, Wilburton, Savanna Winterset and others and I believe if we are going to do anything we ought to do it right. I believe I made a mistake when I recommended four men from the Oklahoma field, be-

cause in writing up a detailed contract, you could not do justice to the men in that field, you could not do it with two men. Now, then, there is what is known as the pitching vein in that field at Pittsburg and Savanna and western McAlester, and in No. 19 it is not, but in Red Oak and others it has been shut down for some time, but it is liable to be opened up at any time. They are laying tracks in those mines, and in some cases the company lays them and some they don't, and the men working in Adamson, where I believe that the conditions and the prices are better than in some of the other pitching [veinw,] might not know about the conditions in the other mines. You take the condition in Pittsburg, Oklahoma, and they are not as good as the conditions a few miles over, and where a man was working in a pitching vein he wouldn't know about the conditions in another mine, and the scale committeeman to be selected from a pitching vein would have an opportunity to visit these mines and get in touch with the member of our organization, and then you will accomplish something and the membership of our organization won't say after the convention is adjourned that they didn't pay any attention to us, that they went up there and selected a scale committeeman and he doesn't know
2504 about the conditions at our place. They are justified in saying that. There is a low coal field in there, Dow and Alderson and Bache, and all around in there, and in that low coal field just the same thing exists. You take Haileyville and Hartshorne and the conditions are different, and you go into Wilburton and as far as the contract is concerned along the Rock Island tracks, the mines of the Great Western Coal Company at Wilburton have a pretty good detailed contract that was written up in 1903, and along that line in 1903 the delegates from that local union insisted upon a detailed contract, and that was as much as we were able to get at that time, and it was written in the contract. I thought it was my duty to give you this tip, because you are entering upon one of the most important eras of our organization, and that is writing a detailed report of our scale, because you must remember that after it is written, if we make any mistakes, they will say you have not got it in your contract, and we have made a detailed contract now, and it is something you did not have, if you did, you would have had it in your contract. Now, I know something about putting it back to your local union to write a detailed contract. Let me tell you if you do that you will make one of the greatest mistakes ever made in your lives. I believe you should select [mine] men instead of eight, in order to give these men along the Rock Island track equal

representation, and you should give your scale committee, whoever they may be, an opportunity to visit these mines and get up the detailed contract and send a copy to me as soon as he has it done, so that I could go over it in order
2505 that there may be no mistakes. If I catch any, I can call them to his attention and then when he goes to Kansas City, it doesn't make any difference what operator comes up the, he is in a position to tell them, 'I know differently, because I was in that mine and seen that you don't pay for this class of work, and they are paying for the same class of work in a mine a hundred yards away.' And if you will do that, in my opinion you will put your contract on a more competitive basis and give our membership better service, and when you select new committeemen and elect new district officers, you will give them what I call a square deal, because when you elect a district officer now and put that contract in his hands there is nothing to it except a bunch of paper. It is all in written decisions, and in written laws, and it is impossible for a fellow, it doesn't make any difference how intelligent he is, unless he knows everything connected with Arkansas and Oklahoma, when he violates it he is in a bad position."

Mr. Drinker: From page 364 as marked, from the same proceedings, from President Stewart's remarks.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Do you know why they told him that, they knew I was at the legislature and the mine run law had passed by a large majority, and they said, if Stewart will call the Central Coal & Coke Company's mines on strike now, we will raise
2506 such a fuss that we are bound to get it through the senate, and I realized the position that I was in, and I knew that the last five days they couldn't repeal the mine run law, and I told Board Members McLachlin to order a strike at every one of the Bache & Denman mines, and the Central Coal & Coke Company mines. The only mistake we made was we called out the Bache & Denman mines first, and by that time we got around to the others, there were five or six of them, when we got around to the Central Coal & Coke Com-

pany, they had agreed to pay for this bone coal, but a large amount of it had caved in, and we never did get anything for it."

Mr. Drinker: This is the Joint Southwestern Conference Report of July 13th, 1903, which was Exhibit 9, from page 3, to show that there were present Messrs. Hanraty, Stewart, Manuel and Bache.

Mr. Warrum: To which the defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: And from the same report, on page 47, the remarks of Mr. Bosfield, and 48, from the same.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Mr. Bousfield: Even though we will admit—which we won't—for the sake of argument, that some of the
2507 statements made from the other side of the house, yet I don't think the other side of the house can escape the reasoning, that will come from this side why this advance should not be conceded. We have met many of the gentlemen on the other side of the house, and they have at all times and under all circumstances assured us that they were only desirous of being placed on a fair competitive basis with their competitors in other states, Iowa, Illinois and other states east of us. If we were to admit the argument made by Mr. Darnall, then the gentlemen could not have been acquainted with their business when they made contracts prior to the one we are trying to make today, because by virtue of those statements they have not only informed us but informed the country at large that, from their point of view, the contracts already made, even contracts that have expired as well as the one under which we are working, have been accepted by them as a fair competitive basis under which to work and sell and deliver their coal. Taking it from their own statements that they were then on a fair competitive basis with the operators of Iowa and Illinois, then in my judgment the operators of these districts must have made a serious mistake

prior to this, and must have been coining even more money than we gave them credit for; or else the Illinois and Iowa operators have been placed at a serious disadvantage, because they have materially advanced the wages of their men. In fact, they have advanced the wages of their men as much as you are now asked to advance yours. That in itself ought
to establish the justice of the request coming from this
2508 side of the house, because you cannot now say the competitive basis will [—] unequal by giving us the same relative advance, if, as you claimed, they were equal one year ago. You know you have made this statement. It is not necessary to go into the archives of history, because I know you will be fair enough to admit that these statements have been made. Without any other argument, it seems to me, if you were honest in your statements one year ago, the relative basis of today ought not to be changed.''

Mr. Drinker: From page 59, the resolution as marked.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Whereas, The call of May 29, 1903, by the executive officers of Districts 14, 21 and 25 of the U. M. W. of A. for an Interstate Joint Conference of miners and operators, comprising the states of Missouri, Kansas and Arkansas and the Indian Territory, for the formation of a scale to govern the prices of pick and machine mining, day work, dead work and yardage, 'and any other questions affecting an Interstate Agreement, which may be mutually agreed upon,' and whereas the product of these districts being inter-competitive, and whereas, past experience has established the fact that the general conditions of mining in the states and territory named have not heretofore been uniform or satisfactory; therefore be it

Resolved, That this joint conference hereby agrees to execute, before adjournment, such rules and regulations
2509 as are necessary for the equitable and satisfactory government of the operation of the mines, between miners and operators in such states and territory.''

Mr. Drinker: Page 61, showing the resolution, as amended, carried.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"After the meeting was again reconvened, Mr. Richardson said: I should like to amend the resolution, in this manner: I move that the word 'general' be inserted after the word 'such', and that the word 'general' be stricken out where it appears after the word 'satisfactory.'

The motion was seconded and carried by unanimous vote of both sides."

Mr. Drinker: Page 64 to 65, as marked.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"We feel that the present scale of selling prices are as high as we can afford to make them in view of the competition from Alabama and surrounding states, and also in view of the discovery of oil in the South. (Mr. Darnall)"

Mr. Drinker: Page 112 to 113, remarks of Mr. Scholz.

Mr. Warrum: The defendants renew their objection.

2510 The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"When you speak of what we shall get for our coal Mr. Richardson says we can put a price on our coal and sell it. I shall ask you men what are the conditions that prevail in the Territory where we sell our coal in competition with the coal from other fields. I have asked this question of one of your men and he said he didn't know. We sell our coal and the Choctaw in competition particularly with the coal coming from Birmingham and from Colorado. I can buy Birmingham coal at our mines today for $1.10, and our coal to produce it costs $1.60 a ton. I will ask you to consider the conditions that prevail in the Territory as compared with Colorado and Birmingham. We have a number of physical conditions to contend with that they do not have; we have conditions that do not exist in Colorado, West Virginia, Ohio, or

the bituminous mines of Pennsylvania, Illinois and Indiana. I have been through all of those fields, and have studied them, and have been greatly disappointed with the cost of mining in the Territory, because I thought we ought to produce coal at about the same price as it is produced in the states I have mentioned. We have thin veins, and the pitch ranges from 2 to 25. That alone increases the cost to the operator, while it does not increase the work for the miners. The miner takes his car and pushes it to the face in other places, while we have to haul it there. The pitching causes the water to run to the face. The cost of pumping the water has
2511 been very high. Then we have gas, which of course is a disadvantage to the miners as well as to the operators. I do not ask the men, however, to do anything I would not do myself; I go into the mines and my superintendents do the same thing. We have to maintain air ways, fans and other means to keep the air good that are not used in those other fields.

As I said before, our coal comes into competition with Colorado coal. The mining rate in Colorado is fifty cents for 2400 pounds, or 43 cents the short ton. The mining rate we are now paying is 65 cents a ton. The miners out there have the same opportunity to mine as many tons of coal a day as our people have. Our coal comes into competition with their coal, and if we increase the cost of mining our market will contract instead of expand."

Mr. Drinker: Page 202 to 203, of the remarks of Mr. Devlin, a miner, Scholz being an operator, and Bousfield, I think, was an operator.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"There is another matter I think the miners' leaders ought to consider. If they were all as conservative as your President, we would have no trouble. But as a rule the pit committees with whom we have to deal are not conservative. The pit committees and the subordinate officials of your organization sometimes take the contract and get things
2512 out of it no one ever supposed was in there. The conditions imposed upon us sometimes are very severe. I only speak of these things when we meet; there is no use

kicking about them except at the annual meetings, for then the officers can take them up. If we are to pull together we should pull fairly, and we should give just what we expect. I make this appeal today with all the earnestness at my command. An arbitrary pit committee can raise hell in any district, I don't care whether it is, if they go around hunting for a chip to knock off the operator's shoulder. This is not fair, and I ask you to try to have your men a little more conservative and obedient to your laws. If you do not it will ultimately disrupt your organization. It may not do it in one or two years, but any body of men without a spirit of obedience to the laws that are supposed to govern them, and without any regard for the contract that is made for them, will disrupt a movement with which they are connected. I think before you leave this place you ought to instruct your subordinates that they ought to religiously carry out whatever agreement is made here. I notice that in this state and in others it is not maintained as it should be. I say this in a spirit of fairness, and I appeal to you in this matter, because if you do not do this trouble will result."

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2513 Mr. Drinker: Mr. Hardin, you read Mr. Lewis' testimony, and while you are doing it, Mr. Finley can point out the map in general.

Mr. Hardin: I will read the testimony of H. O. Lewis, on page 2368 of the old record.

Mr. Drinker: Mr. Finley, you go over to the map and point out the different places on the map as Mr. Lewis' testimony is read.

Mr. Warrum: If the court please, while they are reading this testimony, he will point out these places on the map, and will say, "This is No. 4", indicating. I assume that he will indicate the proper places. Why shouldn't Mr. Finley be sworn and indicate himself?

Mr. Drinker: All right. We will do that.

The Court: Swear the witness.

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C. H. FINLEY, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is C. H. Finley? A. Yes, sir.

Q. Now, Mr. Finley, just go ahead and point out those places on the map.

(Whereupon, the witness proceeded to a large relief map, stationed near the jury, and proceeded to point out the different locations thereon, as follows:)

A. This place here is mine No. 4, and this is the little
2514 hill that leads up back of it. This represents the tipple here (indicating). The shaft is right at that point there, coming down into the ground, and the coal comes down here and is screened across these tracks into the cars.

Over here was No. 3 mine, where the dump is located, the rock dump. Beyond here is Mammoth Vein No. 1, with its rock dump, and its two tipples. One of these tracks here is the Midland Valley tracks, and the other is the Rock Island tracks, over the brow of the hill there.

Praire Creek camp is here (indicating), and No. 3 camp up here, and No. 4 camp, which has been mentioned, does not appear on this map. Here is what is called the Griffith mine (indicating). Here is the hill from No. 4. Over here is Frogtown. The school house or union hall is in here. This is the public road to Huntington, this is a public road to Hartford. The public road to Midland comes this way.

By Mr. Hardin:

Q. Explain the entire map, the hills and the roads all over.

A. Well, here is a wire fence coming along on both sides of the track and out here to the main road. There is one on this side and one on the other side. Across here is a representation of the wire rope that was stretched from one fence to the other. Across at this point was the outside rope, and beyond the mine and beyond the rock dump there was a fence to the hill over there.

This is the main line of the Midland Valley railroad here,
with a side track over here to this field, between mine
2515 No. 4 and the union hall or school house. This dotted line here is the electric power line. It came off the main road here that runs into the mine, and furnishes power for some of the machinery and for lights.

The two dark spots you see here represent the bunk house and cook shanty, where the non-union men had to make their homes in the beginning. This building here is the blacksmith

shop. This represents a railroad crossing below the tipple. This track inclines in this direction. The cars would be placed empty in here with a railroad engine, and they would drop through here empty to the tipple by gravity, and then they would come under the top and then down by gravity, down to the scales, and on out of the way over here (indicating).

Here is the depot at Prairie Creek, where the passenger trains made regular stops, either on signal or by time card. During the open shop movement at No. 4, when men were coming in and being bothered at Prairie Creek, the Midland Valley stopped its trains here at this road crossing so the men could get off there and go direct to the mine, and freight was unloaded here as well.

This is the creek.

By Mr. Hardin:

Q. Where is this Goo Goo Eyes, and what is it?

A. The Goo Goo Eyes is the name of a surface opening at the slope that went from the surface of that mine down to the bottom of the shaft. The slope ran about in this direction (indicating), and there was an engine in there with a rope that let the loads down the hill from this place up here to
2516 the bottom of this shaft, where they were hoisted and dumped, and entries turned underneath the ground and rooms off those entries from that point down to the shaft level.

Q. What is the distance in miles from No. 3 and No. 4?

A. From half to three-quarters of a mile, in my judgment.

Q. And to the school house from No 4?

A. Between a quarter and half a mile.

Mr. McDonough: If the court please, I would like to ask a few questions.

The Court: Very well.

By Mr. McDonough:

Q. Mr. Finley, what is the scale of that map? First, the vertical scale is what?

A. The vertical scale, one inch is equal to 30 feet.

Q. And the horizontal scale?

A. One inch equal to 100 feet

Q. Is the Mammoth Vein Mine No. 1 shown on there?

A. Yes, sir, Mammoth Vein No. 1 is right here (indicating).

Q. Where is the Dallas mine, if that is shown?

A. The Dallas mine is not on there. Part of the Hoffman mine is there, and the Dallas mine is on beyond.

Q. Which is north, south, east and west on the map?

A. I am rather uncertain about my directions down there. I can't tell which direction is which.

Q. To refresh your memory, I will ask you which way the coal dips?

A. The coal dips in this direction (indicating), toward Sugar Loaf Mountain.

2517 Q. Toward the bottom of the map?

A. Toward the bottom of the map, yes, sir.

Q. The town of Hartford is in that direction?

A. Yes, sir.

Q. And Hartford is east—no southwest from this mine, is it not, generally speaking?

A. Yes, sir, that is true.

Q. Then would not the top of the map be south and the bottom north?

A. Something near it, but not exactly.

Q. The coal rises to the south, does it not, in that valley, on the side where these mines are located?

A. Yes, sir.

Q. And the town of Hartford is not on the map?

A. No, sir.

Q. Neither is the Dallas mine?

A. No, sir.

Q. But the Hoffman mine is on it, and the other mines you have described?

A. Yes, sir.

Q. They are shown on the map?

A. All that I have described. Mammoth Vein No. 6 is not on here, nor is Coronado on here.

Q. Have you shown the road to Hartford?

A. (Indicating) Here is the wagon road to Hartford, this brown line running across the hill over here towards Frogtown, and then it turns around here and winds around

2518 the side of this hill into Hartford.

Q. Have you shown the two tipples at these mines?

A. Yes, sir. This is the Midland Valley tipple, and Mammoth Vein No. 1, and there is the Rock Island tipple at the same mine. That cut through that ridge is a cut made for the tracks to run from this mine to this one, the tracks for the pit cars to run down on.

Mr. McDonough: That is all

The Court: Do you offer the map in evidence?

Mr. Drinker: Yes, we offer the relief map in evidence.

The Court: Have it marked as an exhibit.

Whereupon, the relief map about which the witness had been testifying was marked by the reporter "Plaintiffs' Exhibit No. 25.")

Mr. Drinker: We ask to have these pictures marked as exhibits, those that were not marked the other day.

The Court: Let the stenographer mark them.

(Whereupon, large pictures were marked by the reporter Plaintiffs' Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.)

By Mr. Drinker:

Q. What are Exhibits 20 and 31, Mr Finney?

A. No. 21 is the Coronado tipple and washer before the fire.

Q. And 31?

A. 31 is taken a day or so afterwards. Here is another picture of Coronado taken from a different location. This picture was taken from practically the same spot that the other one was before.

2519 Q. That is No. 28?

A. Yes, sir. If this other could be compared with that you could see it is the same ground.

Q. Exhibit 19 was taken before, and 33 afterward?

A. That is before and after, of the Rock Island tipple at Mammoth Vein No. 1.

Q. The one I am holding is No. 19?

A. No. 33 is after the fire.

Q. Now, Dallas. That is Exhibit 21.

A. No. 21 is Dallas before the destruction, and 35 was taken afterward. The tipple was afire, but the fire was put out before it burned down.

Q. Prairie Creek No. 4, No. 17 before?

A. And 30 afterward.

Q. Prairie Creek No. 4?

A. Yes, sir.

Q. Mammoth Vein No. 1, No. 18 before.

A. Here is another one of No 4 afterward.

Q. That is Exhibit 32?

A. 32 is a picture of Mine No. 4 after the work had been done.

Q. Mammoth Vein No. 1, No 18 before

A. No. 34 is Mammoth Vein, Midland Valley plant, after the fire.

Q. And 18?

A. 18 is before. Here is another one of Mammoth Vein No. 1. Exhibit No. 29 was the Midland Valley tipple taken from a different location. No. 27 is a picture of Prairie Creek No. 3 slope showing it has been caved in, taken after
2520 the battle. No. 26 is a view of the remains of Prairie Creek No. 3 tipple.

Q. What is No. 36?

A. That is a picture showing the thickness of the coal inside Mammoth Vein No. 1.

Q. Point out where the coal laid.

A. Here is the floor, bottom and the top is up here.

Q. What is the dark strip?

A. That is the band in the middle.

(Witness excused.)

2521 Plaintiffs' Exhibit 25.



2522 (Plaintiffs' Exhibit 26, Photograph of Prairie Creek No. 3 tipple after fire.)



2523 (Plaintiffs' Exhibit 27, Photograph of Prairie Creek No. 3 slope after fire.)



2524 (Plaintiffs' Exhibit 28, Photograph of Coronado tipple after fire.)



2525 (Plaintiffs' Exhibit 29, Photograph of Mammoth Vein Midland Valley after fire.)



2526 (Plaintiffs' Exhibit 30, Photograph of Prairie Creek No. 4 after fire.)



2527 (Plaintiffs' Exhibit 31, Photograph of Coronado tipple after fire.)



2528 (Plaintiffs' Exhibit 32, Photograph of Prairie Creek No. 4 after fire.)



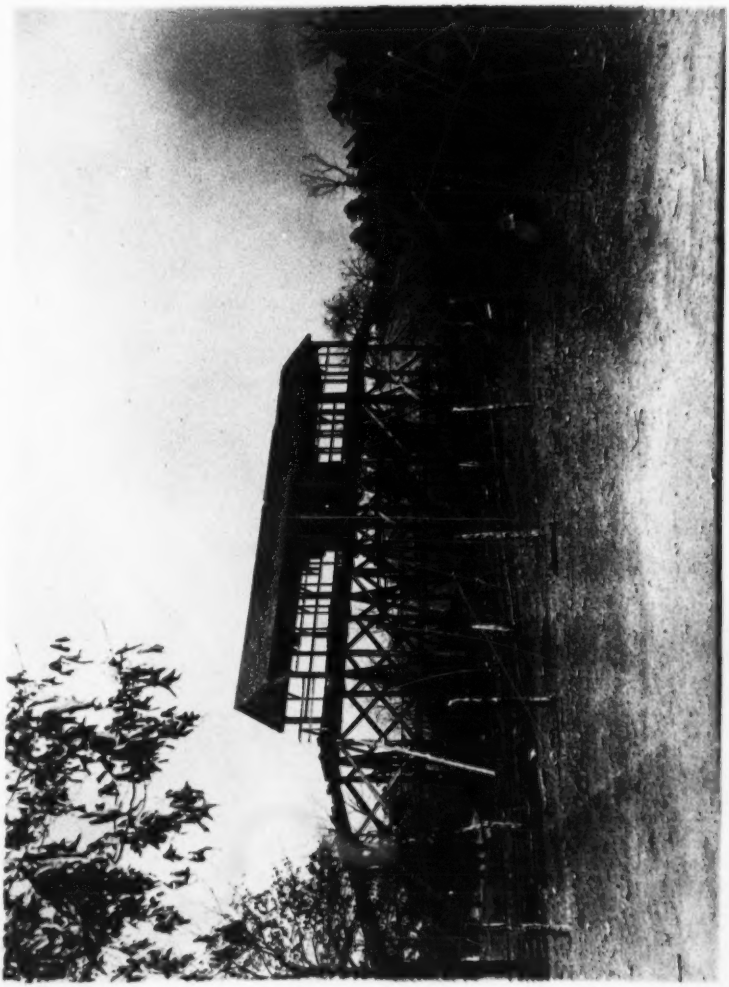
2529 (Plaintiffs' Exhibit 33, Photograph of Mammoth Vein No. 1, Rock Island, after fire.)



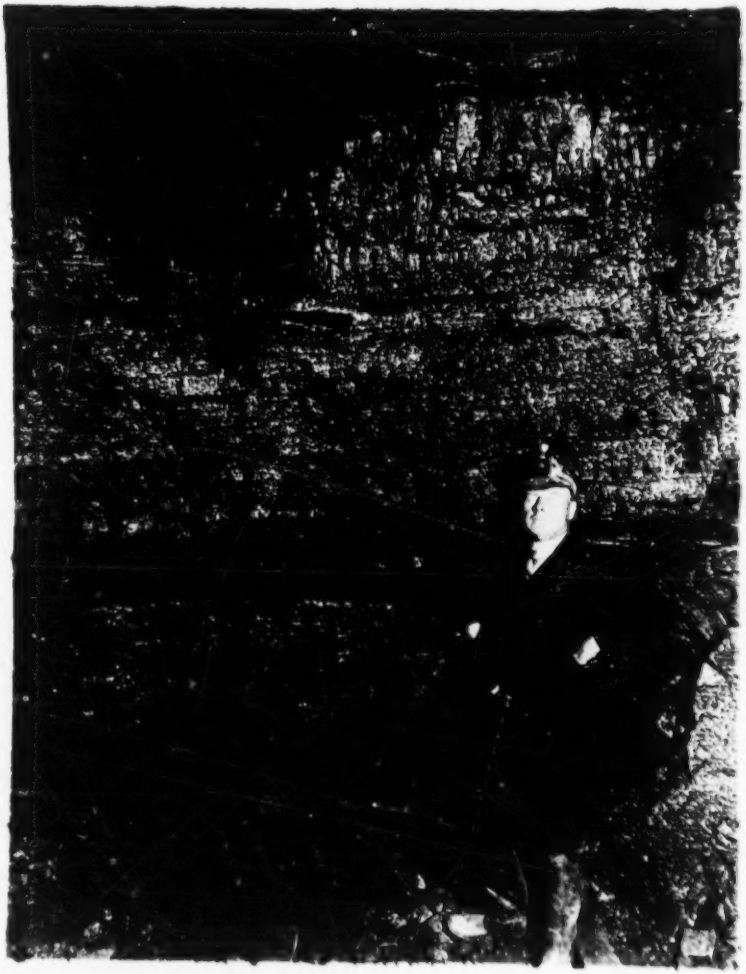
2530 (Plaintiffs' Exhibit 34, Photograph of Mammoth Vein Midland Valley after fire.)



2531 (Plaintiffs' Exhibit 35, Photograph of Dallas Mine after fire.)



2532 (Plaintiffs' Exhibit 36, Photograph showing thickness of coal inside Mammoth Vein No. 1.)



2533 Mr. Drinker: Now, we offer in evidence the expense account of John P. White, as produced by the other side, for the first half of April, 1914, showing the following items.

Mr. Warrum: The defendants separately object to the introduction of this evidence. It was introduced before, and under the ruling of the Supreme Court it tends to prove no issue in this case or throw any light upon the contention of the plaintiffs.

The Court: It may go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: "April 4th, railroad fare from Des Moines to Kansas City." I will not read the figures, just the items. There is no railroad fare from the 4th of April to the 10th, and then there is railroad fare from Kansas City to Des Moines. No railroad fare from the 10th to the 12th, and then Des Moines to Kansas City. The second page of this account is not here. There is no imputation about it. It has been lost among the exhibits. It was here at the other trial.

2534 Mr. Warrum: There is no use talking about imputations. It is in the record.

Mr. Drinker: No, it isn't.

Mr. Warrum: You could have put it in the record.

Mr. Drinker: Of course. I don't draw any imputation. It is lost.

The Court: Proceed:

Mr. Drinker: Here it is. There was no railroad fare from the 12th of April to the 16th of April, and then there was railroad fare from Kansas City to Lexington. On the 17th railroad fare from Lexington to Kansas City. No railroad from the 17th to the 23rd, then railroad fare from Kansas City to Des Moines.

Mr. Warrum: I can't see how this is competent evidence. There can be no inference drawn from the fact that he went from Lexington to Kansas City.

The Court: I suppose it will be connected up in some way with something.

Mr. Drinker: It is to show where he was, that is all.

The Court: Proceed.

Mr. Drinker: The expense account for the month of May, 1914. On the 17th Kansas City to Fort Smith, railroad fare and berth, cab. No railroad fare or berth to the 24th, and then on the 24th railroad fare Fort Smith to Kansas City.

Expense account of James Mullen.

Mr. Warrum: I don't know whether the court recalls
2535 it or not, but that was read in connection with the deposition of William Green, one of the first things read in this record and we object to the re-reading of it.

The Court: It seems to me that is right.

Mr. Drinker: I read some of it.

The Court: Don't let us have any duplication.

Mr. Drinker: I will check that up.

The Court: I think you read it before.

Mr. Drinker: I don't think I read it all. I will check that over and see that we do not duplicate anything.

The Court: Very well. Who will you have next?

Mr. Drinker: I have some more documentary evidence. We offer in evidence the constitution of District 21. It is in the defendants' answer. I am not sure whether that is part of the record or not.

The Court: Certainly it is. The pleadings are a part of the record.

Mr. Drinker: Then we do not offer it. It is part of the record without being offered.

We offer in evidence plaintiffs' Exhibit No. 193 in the former trial, page 2415 of the old record, being the indictment returned in United States District Court for the Western District of Arkansas.

Mr. Warrum: Of course, I never thought that was competent evidence.

The Court: I don't think so now.

Mr. Drinker: It is the indictment and pleas of guilty.
2536 We have to show what they were indicted for. The pleas of guilty are admissions, and the fines were all paid by the district. We have to show what they were in-

dicted for, and what they plead guilty to, and then show the payment of the fines as an admission of the union.

The Court: You can show the fines were paid.

Mr. Drinker: We have to show what the men pleaded guilty to. I would be glad to have it not copied into this record, if we can agree it may be referred to out of the old record.

The Court: You may offer so much as shows the fine of these men and the pleas of guilty.

Mr. Drinker: How can we tell what they were guilty of without the indictment?

The Court: What does it matter? All you want is to connect the district. If they were fined, charged with something and fined, and the district paid it, isn't that sufficient?

Mr. Drinker: It wouldn't amount to anything if it was not for something we are suing for. The indictment shows they were indicted for destroying part of this property and pled guilty to it and the district paid the fine.

The Court: I don't think the charge in the indictment will help out. The Journal entry of their conviction will show that.

Mr. Drinker: Then we will offer from page 2476, that entry. Well, your Honor, it only says "An offense against the United States." It refers to the number of the case.

The Court: Very well. Let it go in.

Mr. Drinker: Then I will renew the first offer of the
2537 indictment, at page 2415 of the old record.

Mr. Warrum: We would like to make our objection, on the ground that it is a proceeding pending in the criminal court, and not binding on the defendants in this case.

The Court: Let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

"Wednesday Morning 9:00 o'clock, January 20, 1915.

Court met pursuant to adjournment.

Present: The Honorable James D. Elliott, United States District Judge for the District of South Dakota, sitting by assignment.

United States,
No. 1328. vs.
Clint Burris, et al.

Indictment—Conspiracy to Commit an Offense against the United States.

This day comes the United States of America by W. C. Fitts, Esq., and Roger B. Hull Special Assistant to the Attorney General of the United States, and come the defendants Clint Burris, Sandy Robinson, James Slankard, Peter R. Stewart, John Manick, James McNamara and Fred Holt, each in his own proper person and by Webb Covington, Esq., his attorney, and by leave of court each of said defendants now in open court withdraws his plea of not guilty heretofore entered herein, and each of said defendants for himself says he is guilty as charged in the indictment in the above-entitled cause.

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2538

United States,
No. 1238. vs.
Clint Burris.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States the said defendant Clint Burris, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said Clint Burris for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of six months, and that he pay to the United States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said Clint Burris is now here committed, receive and safely keep and convey the

body of the said Clint Burris hence to said Sebastian
2539 County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Clint Burris in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of said jail, and the other returned by the mashal to this court, with a full and true account of the execution of the same."

Mr. Drinker: Then on page 2478 of the old record, excerpts from the criminal docket of this court, journal entries, excerpts from the criminal docket of the United States District Court for the Western District of Arkansas, extending over to page 2483, showing the indictments against Sandy Robinson, James Slankard, John Manick, Peter R. Stewart, Fred Holt, James McNamara, Dave Branch, ending on page 2483. Also on page 2487, the journal entry in the case against Sandy Robinson.

(Which said excerpts from the old record are in words and figures following, to-wit:)

"United States,
1328. vs.
Sandy Robinson.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States, the said defend-
2540 ant Sandy Robinson, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said Sandy Robinson for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith Arkansas, for

the term and period of Six Months, and that he pay to the United States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said Jail until said fine is paid.

It is further considered, that the marshal of the western District of Arkansas, in whose custody the said Santy Robinson is now here committed, receive and safely keep and convey the body of the said Sandy Robinson hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Sandy Robinson in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this Court furnish the marshal of this district with two duly certified
2541 copies of this judgment, sentence and order, under the seal of the Court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal of this court, with a full and true account of the execution of the same.

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United States,
No. 1238. vs.
James Slankard.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States, the said defendant James Slankard, was brought to the bar of the court, in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said James Slankard for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay to the United States of America a fine of One Thousand Dollars, and

that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

2542 It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said James Slankard is now here committed, receive and safely keep and convey the body of the said Slankard hence to said Sebastian County Jail without delay, and deliver him to the costody of the keeper of said jail, who will receive and safely keep the said James Slankard in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this Court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same.

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United States
No. 1238. vs.
John Manick.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States, the said defendant John Manick, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not
2543 now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said John Manick for his said offense, be imprisoned in the Sebastian County jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay the United States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

It is further considered that the marshal of the Western District of Arkansas, in whose custody the said John Manick

is now here committed, receive and safely keep and convey the body of the said John Manick hence to said Sebastian County Jail without delay, and deliver to the custody of the keeper of said jail, who will receive and safely keep the said John Manick in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same.

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United States
No. 1238. vs.
2544 Peter R. Stewart.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Special Assistant to the Attorney General of the United States, the said defendant Peter R. Stewart was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he had to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20 day of January A. D. 1915 shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said Peter R. Stewart for his said offense, pay to the United States of America a fine of One Thousand Dollars, and that it have execution therefor; and that said defendant stand committed until said fine is paid.

It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said Peter R. Stewart is now here committed, receive and safely keep and convey the body of the said Peter R. Stewart hence to the Sebastian County Jail for the Fort Smith District, at Fort Smith, Arkansas, without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Peter R. Stewart in jail in execution of the sentence aforesaid until said fine is paid.

2545 And it is further ordered, that the clerk of this court, furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same.

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United States
No. 1328. vs. Indictment.
Fred Holt.

Conspiracy to Commit an Offense against the United States.

(In the same form as the preceding with the following exception: 'be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for a term and period of Six Months, and that he pay to the United States of America, a fine of One Thousand Dollars.')

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United States
No. 1238 vs. Indictment
James McNamara.

Conspiracy to commit an offense against the United States.

(In the same form as the preceding with the following exception: 'be imprisoned in the United States Penitentiary situated at Leavenworth in the State of Kansas, for the term and period of two years, at hard labor, and that he pay the United States of America a fine of One Thousand Dollars.')

Court met pursuant to adjournment. Present, the Honorable James D. Elliott, United States District Judge for the District of South Dakota, sitting by assignment.

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2546 United States
No. 1238 vs. Indictment
Dave Branch.

Conspiracy to Commit an offense against the United States.

(In the same form as the preceding with the following exception: 'be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the

term and period of Six Months, and that he pay to the United States of America a fine of One Thousand Dollars.')"

"This day comes the United States of America by James V. Bourland, Esq., United States Attorney for the Western District of Arkansas, and one J. B. McDonough, Esq., and comes the defendant Sandy Robinson in his own proper person and by Webb Covington, Esq., and W. R. McFarlane, Esq., his attorneys, and the above-entitled cases having been heretofore heard, argued and submitted, the Court being now well and sufficiently advised in the premises, doth find the defendant, Sandy Robinson guilty of contempt of court in each of the above entitled cases in that he violated the decree of this court entered on the 9th day of May, 1914, in the case of Mammoth Vein Coal Mining Company, plaintiffs, vs. M. Hunter, et al., defendants, numbered 241 in equity; and it is ordered that said cases be consolidated for judgment and sentence.

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said Sandy Robinson, for his said contempt, be imprisoned in the Sebastian County
2547 Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of sixty days, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended, and that it have execution therefor.

It is further considered, ordered and adjudged, that the marshal of the Western District of Arkansas, in whose custody the said Sandy Robinson is now here committed receive and safely keep and convey the body of the said Sandy Robinson hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Sandy Robinson in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the Court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same."

Mr. Drinker: On pages 2064 to 2275 there is a whole mass of contracts, leases, inventories, and so forth, which made out the title of the plaintiff companies to these properties. I

wonder if we could not stipulate that that could be considered as offered in evidence, by referring to the old record, without copying it into this record.

Mr. Warrum: That is part of the testimony before. I never could understand just exactly why they would
2548 have to present the muniments of title in a case of this kind.

The Court: I don't see why that would be necessary in a case of this kind. It seems to me it certainly is not necessary.

Mr. Drinker: I want to show who owned this machinery.

The Court: Of course, it was in your possession and you had been using it. Wouldn't that be enough.

Mr. Drinker: I don't propose to take any chances in this case. If we have to call other witnesses to identify all these things, we will do it.

The Court: Let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. McDonough: There is one thing I want to call your attention to. These leases and contracts show the interrelations of these corporations, showing that one company owned this and another company owned that.

The Court: I understand they are offering their muniments of title. I never supposed that was necessary.

Mr. Drinker: Do I understand it is necessary to call witnesses?

The Court: No. Let the whole record go in.

Mr. Warrum: I want to suggest with reference to that, this old record contains interpolations between these different leases and contracts, and examination of Mr. Denman. Do you mean to let the whole record go in with reference to the instruments themselves, and not the examination of the witness?

Mr. Drinker: We don't offer anything from Mr. Denman.

2549 The Court: Just let the leases and contracts, the papers appearing there, go in.

Mr. Drinker: In this record?

The Court: No objection has been made.

Mr. Drinker: I offer the various contracts and exhibits as follows, by their numbers in the old record and the pages in the old record:

Plaintiffs' Exhibit No. 102 in the old record, page 2064, with the inventory annexed on page 2075; Exhibit 103, page 2090; Exhibit 104, page 2091; Exhibit 120, page 2099; Exhibit 121, page 2100; Exhibit 123, page 2102; Exhibit 122, page 2103; Exhibit 124, page 2104; Exhibit 108, page 2105; paper annexed to Exhibit 112, page 2110; the authority of the Sebastian County Coal Company to assignment of lease, page 2110; authority of Bache to deed, page 2110; acceptance and agreement of Sebastian County Coal Company, page 2110; assignment of contract and lease, page 2111; contract of lease, Exhibit 122 of the old record, page 2112; Exhibit 109, page 2121; Exhibit 113, page 2124; Exhibit 124, page 2130; Exhibit 125, page 2135; Exhibit 126, 2136; Exhibit 127, page 2138; Exhibit 128, page 2139; Exhibit 100, page 2140; Exhibit 101, page 2152; Exhibit 107, page 2154; Exhibit 15, inventory, page 2163; Exhibit 105, page 2180; Exhibit 129, page 2190; Exhibit 130, page 2192; Exhibit 131, page 2194; Exhibit 132, page 2195; Exhibit 133, page 2197; Exhibit 134, page 2198; Exhibit 135, page 2200; Exhibit 136, page 2201; Exhibit 137, page 2203; Exhibit 138, page 2204; Exhibit 139, page
2550 2205; Exhibit 140, page 2206; Exhibit 141, page 2207; Exhibit 142, page 2209; Exhibit 143, page 2210; Exhibit 144, page 2211; Exhibit 145, page 2213; Exhibit 146, page 2214; Exhibit 147, page 2215; Exhibit 148, page 2216; Exhibit 149, page 2218; Exhibit 150, page 2219; Exhibit 151, page 2221; contract between Prairie Creek and Mammoth Vein, page 2221; Exhibit 152, page 2223; Exhibit 153, page 2227; Exhibit 154, page 2236; contract, page 2238; Exhibit 155, page 2242; Exhibit 115, page 2244; contract, page 2242; Exhibit 116, page 2246; Exhibit 117, page 2248; Exhibit 118, page 2249; Exhibit 119, page 2251; Exhibit 157, page 2253; lease contract, page 2254; Exhibit 110, page 2258; Exhibit 111, page 2260; Exhibit 158, page 2263; Exhibit 114, page 2264; contract between Mammoth Vein Coal Company and Midland Valley Railroad Company, page 2272; Exhibit 158A, page 2276.

Mr. Warrum: We desire to object to that, if the court please; it purports to have been a contract entered into April 2nd, 1917.

Mr. Drinker: I didn't realize that. I withdraw that.

Now, we offer from page 2371 of the old record, plaintiffs' Exhibit 172, being the decree of this court in the case of Coronado Coal Company versus Sebastian County Coal Company, and the decree of September 4th, 1915. Also plaintiffs' Exhibit 173 in the old record, page 2375, following the lease.

(Which said exhibits, contracts and leases, so offered in evidence by plaintiffs, are in the words and figures following, respectively, to-wit:)

2551 Exhibit 102.

This Agreement, made this 18th day of June, 1906, by and between the Cherokee Construction Company, a corporation created under the laws of the Territory of Oklahoma and the Midland Valley Railroad Company, a corporation created under the laws of the State of Arkansas, which corporations are Mammoth Vein Coal Company, a corporation created under the laws of the State of Arkansas, hereinafter designated

"Lessee", of the second part, Witnesseth:

That Whereas, on the 26th day of February, 1901, Geo R. Bishop, and Sarah B. Bishop, his wife, of Sebastian County, Arkansas, as parties of the first part, entered into a contract or lease with one Jerry Cravens, of Sebastian County, Arkansas, covering the following described land, to-wit:

The Southeast quarter of Section thirteen (13), Township Five (5) North, Range thirty-two (32) West, Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and adjoining buildings of the said Bishops are situated, upon which lease Mine No. 6 of the Lessors is situated;

which lease was by the said Cravens sold, assigned, and transferred to one Geo. T. Williams, and by the said Geo. T. Williams sold, assigned and transferred to the Montreal Coal Company, a corporation, which lease is hereinafter designated as the "George Bishop Lease", and

Whereas, on the same date, Araminta D. Bishop, widow of R. A. Bishop, deceased, and his other heirs-at-law, entered into a contract or lease with the said Jerry M. Cravens covering the following described land, to-wit:

2552 The Northeast quarter of Section thirteen (13), and the North half of the Northwest quarter and the North half of the Southeast quarter of the Northwest quarter of

Section Thirteen (13), Township Five (5) North, Range Thirty-Two (32) West, Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and buildings of said Araminta Bishop are situated;

which lease was by the said Cravens sold, assigned and transferred to one Geo. T. Williams, and by the said Geo. T. Williams sold, assigned and transferred to the Montreal Company, a corporation, which lease is hereinafter designated as the "Araminta Bishop Lease:" and

Whereas, on the 26th day of February, 1901, one T. A. Bishop and wife and Mary H. Anderson and husband entered into a contract or lease with the said Jerry M. Cravens covering the following described land, to-wit:

The West part of the Northwest quarter of the Southwest quarter of Section eighteen (18). Township Five (5) North, Range Thirty-one (31) West, lying west of the center of James Fork Creek, containing thirty (30) acres, more or less, in Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and buildings of the said Bishops and Andersons were located.

which lease was by the said Cravens sold, assigned and transferred to one Geo. R. Williams, and by the said Geo. T. Williams sold, assigned and transferred to the Montreal Coal Company, a corporation, which lease is hereinafter designated as the "Robert Bishop lease" and which lease has not been practically worked out, but on which is situated the
2553 mouth of Slope No. 5 of the Lessors through which coal is taken from said "George Bishop lease:" and

Whereas, the Lessors herein became the purchasers of all of the property and franchises of the Montreal Coal Company which corporation was afterwards dissolved, and are therefore the owners of the coal leasehold interests under the three leases above described, which were acquired for the purpose by giving said lone of railroad the benefit of the tonnage from said coal lands: and

Whereas, the said "Araminta Bishop lease", is involved in a suit for the forfeiture and cancellation of the same in the Chancery Court of Sebastian County, Arkansas, Greenwood District, for an alleged failure to work the same and an alleged failure in the payment of royalty, the outcome of which suit the Lessee is willing to assume; and

Whereas, said Lessee desires to take over and operate said leases and are willing to take said "Araminta Bishop lease" subject to the outcome of said suit, which suit the Lessors agree to defend in Court and defeat if possible;

Now, Therefore, the parties hereto enter into the following covenants and agreements,to-wit:

1. The Lessors, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the Lessee to be paid and performed have and do hereby sell, assign, transfer and quit claim to the Lessee all rights which they have under said leases, for the period of ten (10) years from this date, subject to the outcome of said suit as to the "Araminta Bishop lease" and for the same consideration the lessors have and do hereby lease
2554 to the Lessee their said Mines Nos. 5 and 6 located on said land, together with the entire plant, machinery, tools and forty-eight (48) miners' houses as the same now stands on the East half of the Southwest quarter of Section twenty-four (24) Township Five (5) North, Range Thirty-two (32) West and the numbered from 601 to 648 inclusive, including the right to use said leases for the period of this agreement, with the right to use the two north rooms of the office of the Lessors at said town of Midland; a schedule and inventory of said property is attached hereto as exhibit "A" and made a part hereof.

2. The Lessee covenants and agrees to oush the entry connection from the mine on the lease above described known as the "George Bishop lease" to a connection with the second lease above described known as the "Araminta Bishop lease" to completion as early as possible, and to mine sufficient coal from said "Araminta Bishop lease" to comply with the terms and carry out the provisions of said lease, and of all of said leases, as to the working of the same.

3. The Lessee covenants and agrees to pay the Lessors a royalty of Fifteen (15) cents per ton on all coal mined from said lands, which royalty shall be on the basis of a minimum tonnage of twenty-five thousand (25,000) tons for the first year of this agreement, this to be increased yearly to the extent of twenty-five hundred (2500) tons per year until a minimum tonnage of thirty-seven thousand five hundred (37,500) tons is produced per year which minimum of thirty-seven thousand five hundred (37,500) tons, shall then be main-

2555 tained by the Lessee, or its assigns, until the expiration or termination of this lease or until the workable coal is exhausted by ordinary mining methods.

The Lessors agree to furnish the Lessee railroad cars at the tipple of the Lessee in sufficient numbers so that the said Lessee shall be able to operate it mine not fewer hours per month than ninety per cent (90%) of the hours per month the mines are operated of any other person or corporation on the railroad of the Lessors, including the mines of the Lessors. Cars of foreign roads shall be held to apply as well as home road cars. It is agreed that in case the car supply so apportioned to these mines is insufficient to carry the minimum tonnage for any one year, a pro rata reduction shall be made in the minimum tonnage; provided, however, that under no circumstances shall this be below the amount of twenty-five thousand (25,000) tons, as shown by the records of the Lessors. The obligation, however, to produce this minimum tonnage shall be subject to abatement in case of strikes, abatement from such cause to be apportioned to the length of the strike.

3. The royalty herein provided for of fifteen (15) cents per ton shall be paid upon the minimum tonnage provided for quarterly in advance, and shall be paid within ten (10) days after the beginning of the quarter; and the royalty at the rate of fifteen (15) cents per ton on the excess, is any over said minimum tonnage herein provided for, for any previous quarter shall be added to the advanced minimum royalty for the next succeeding quarter, and a separate and distinct settlement shall be made for each quarter. Should the
2556 amount of coal mined in any one year not amount to the minimum tonnage herein provided for, it is agreed that the Lessee shall have the privilege of mining during the next succeeding years such a quantity of coal in excess of the minimum tonnage required for that year as will make up the deficiency for the previous year without paying any excess royalty thereon for that year.

5. The Lessee covenants and agrees that the mines on said lands shall be worked continuously so far as the general demand for coal warrants; that is to say, that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

6. In the event of coal not being mined up to the minimum in any one year, it is agreed by the Lessors that the Lessee

herein shall be allowed to mine free of royalty in the next succeeding year only sufficient coal to make up the amount of minimum royalty paid in excess on coal mined during the preceding year.

7. The Lessee agrees at the termination of this lease or agreement to return plant and property pertaining to said mines and leases to the Lessors in as good condition as when received, reasonable tear and wear excepted.

8. In the event of the Lessee installing additional boilers steel rails or pit cars during the period of this lease of agreement, they shall at the termination of this lease be paid for by the Lessors at their cost price, not including laying or installation, less depreciation at the rate of ten per cent
2557 (10%) per annum, it being agreed that the Lessors shall not pay for any improvements unless they have been specifically authorized by said Lessors before being put in the mine, and the cost of the same determined and agreed on; Provided that if the Lessee desires the installing of any boilers, steel rails or pit cars, for the installation of which the Lessors will not give their consent, the Lessee shall have the right to install the same and shall have the right to remove or dispose of the same at any time, provided that such removal does not impair the mining capacity of the mines below the minimum tonnage provided herein.

9. It is agreed by and between the parties hereto that no coal shall be shipped from Mine No. 5 on said lands via the St. Louis & San Francisco Railroad without the consent and agreement of the Lessors.

10. The term of this lease shall be ten (10) years from this date, and there shall be no vacation of this lease before the end of said period except by agreement between the parties hereto; Provided that the Lessee may terminate this lease or contract at any time upon six (6) months notice in writing to the Lessors and paying the Cherokee Construction Company the sum of Ten Thousand Dollars ($10,000.00) in cash money as an absolute forfeit and as liquidated damages for the termination of the contract.

11. The said Lessors hereby retain and reserve the right and the Lessee hereby covenants that the said Lessors shall have the right, by their officers, servants, agents and
2558 engineers, at all times to enter into and upon the said premises both on and below the surface, and to inspect, examine and make surveys thereof and the said Lessee doth

covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch and to furnish the Lessors, not less frequently than once in six (6) months, with an accurate copy of said map.

12. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby deminse; and for the purpose of assuring this end to the Lessors with greater certainty the Lessee agrees to maintain in good working order all entries and gangways, air faces of any of the said entries, gangways, air courses, slopes shafts or planes and that portion of the boundary of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts, or planes may be directed is mined out as fully as it can be mined out by any first-class mining methods, or until the Lessors give their consent in writing to abandonment of any of the same. And the
2559 Lessor agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first-class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripping operations on the coal beds hereby demised without the written consent of the Lessors being first had, and that the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the out crop of the coal bed.

That the Lessee shall maintain all buildings and machinery and the appurtenances to the mines, in good condition and working order and keep the same properly insured against fire; (See attached clause to be added):

"Amendment to Insurance Clause, in Lease Contract Cherokee Const. Co. to Mammoth Vein Coal Co. of date June 18, 1906, As agreed to by Mr. F. Bach—H. E. Yarnall—H. E. Y. Letter 11 19 06.

2560 "And will reimburse Lessors annually for fire insurance premiums paid by the Lessors for insurance covering the mine buildings and contents thereof, not including miners' houses. The amount of insurance to be carried on each building to be the same as is now carried, unless varied from by mutual consent; the premiums not to exceed those paid for similar insurance by the Lessee. In event of any loss by fire of buildings or contents, covered by such insurance, the Lessee shall replace or repair the damage with reasonable promptness, and shall be reimbursed therefor by the Lessor to the extent of the insurance on the destroyed or damaged property. Such reimbursement to be affected by the Lessee deducting from the next royalties fur the Lessor the amounts of such insurance. Provided said amounts have not already been paid to the Lessee."

that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interferences either with the use by the said Lessors of the surface covering the coal hereby leased, excepting that surfact hereby demised, or with land leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessors now have standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all times keep workings of the mines operated by it on the said demised premises free from water and from dangerous fases.

2561 13. The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State or Arkansas regulating the mining of coal, and agrees to to protect the Lessors against the violation of said laws by said Lessee.

14. As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability

in the operation of said mine and hereby agrees to protect and save harmless the said [Lessots] and each of them from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent operator or contractor.

In consideration of the premises and as an inducement to the said Lessors to make this agreement and to [vuild] said line of railroad and furnish the necessary spurs, side tracks and switches at the tipple the said Lessee for the accomodation of the Lessee in the handling of its business, said Lessee hereby agrees that the said Lessors, their successors and assigns, shall not be liable for or on account of any loss or damages which may at any time in any manner arise to the said Lessee or its assigns, by reason of fire communicated to the buildings of said Lessee or its assigns, now erected, or hereafter to be erected, or the contents thereof, or to the property of any kind owned or stores by said Lessee along such side tracks, spurs or switches, by the locomotives, trains
2562 or cars of the Lessors, their successors or assigns, or arising in any manner from the operation of such side tracks, or switches, and to that end the said Lessee and its assigns will make no claim against the Lessors, their successors or assigns, for any loss [damafe], charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains or cars of the Lessors upon or along said railroad, spurs, side tracks or switches.

15. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or demise the said premises or any part thereof, to any person or persons or corporation whatsoever, without the written consent of the said Lessors, under their seals, first had and obtained; but said Lessee may contract necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee.

16. And the said Lessors, if they so elect, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessors may so weigh all said coal and coke before shipment, without let or hinderance, from all the operations of the said Lessee; and shall any sidpute arise as to the accuracy of he sales on which the coal and coke are weighed

either by said Lessors or the said Lessee then such disputes shall be settled by testing the said scales by govern-
2563 ment weights.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every calendar month at the office of the [Lessots] on the form furnished by the Lessorrs for that purpose, a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding calendar month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not [seighed] and not accounted for, the quantity of the same shall be ascertained, and account rendered for the same and payment made at the rate above named. And the Lessee [epnevants] that it will keep a book or books of accounts of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

17. The said Lessee convenants and agrees to pay all taxes that may be assessed against the deminse premises and the improvements thereon, and up on the coal mined or coke manufactured during the continuance of this lease.

18 Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry room, shaft, working or other opening or any difference whatsoever which may arise as to the method of skillful conducting said mining operations, and any other matter herein specifically referred to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators which shall be con-
2564 stituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties thereto touching any matter or thing to be done and performed by either hereunder, the same shall be determined by arbitration in the following manner: The party alleging such nonperformance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days, and arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to

agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties thereto.

19. The said Lessee hereby covenants and agrees to ship all coal and coke mined from pr made upon the demised premises to or toward its market or destination by the railroad of the Lessors and such connecting line or lines as the Lessors shall prefer and select for this purpose, and to more fully effectuate this the said Lessee does hereby grant to the said Lessors and to their successors and assigns, the right
2565 to consign or route all coal and coke mined and made and delivered to said Lessors for shipment by said Lessee by whatever line or lines of railroad the said Lessors, or them successors or assigns, may prefer to select. Provided always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke then prevails at the time on any other equally available route; Provided further, that the initial carrier for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Lessors, their successors or assigns, as liquidated damages, for a bteach of contract, the sum of twenty-five (25) cents in the case of coal and forty (40) cents in the case of coke.

20. It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, them the said Lessors shall, at their option, after sixty (60) days' notice, to the Lessee have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation.

21. All of the covenants and agreements, terms and condition of this lease and contract shall inure to the benefit
2566 of, and be binding upon, the successors and assigns of the Lessors, and the successors and assigns of the Lessee, and each of them.

In testimony whereof, the Lessors and Lessee have caused this instrument to be executed by their proper officers thereunto duly authorized and attested by their corporate seals, under authority of their respective Boards of Directors this the day and year first above written.

Attest:
H. E. Yarnall,
Secretary

CHEROKEE CONSTRUCTION COMPANY,
By C. E. Engersoll, President.

Attest:
H. E. Yarnall,
Secretary

MIDLAND VALLEY RAILROAD COMPANY
By C. E. Engersoll, President.
Lessors,

Attest:
Heber Denman,
Secretary.

MAMMOTH VEIN COAL COMPANY
By F. Bache, President.

Lessee.

Commonwealth of Pennsylvania,
County and City of Philadelphia—ss.

2567 Be it remembered, that on this day came before me, the undersigned, a Notary Public, duly commissioned and acting within and for said City of Philadelphia, C. E. Ingersol, Vice-President, and H. E. Yarnall, Secretary, of the Cherokee Construction Company, a corporation, to me personally well known to be such President and secretary, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of saud corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

And on the same day came before me, the undersigned, C. E. Ingersol, President, and H. E. Yarnall, Secretary, of the Midland Valley Railroad Company, a corporation to me personally well known to be such President and Secretary, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of said corporation, as its and their free and voluntary act and

deed for the purposes and consideration therein mentioned and set forth.

Witness my hand and notarial seal, this the 18th day of June, 1906.

OSCAR H. PRICE
(Seal) Notary Public.

My com. exp. February 2, 1910.

2568 State of Arkansas
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, F. Bache and Heber Denman, to me personally well known to be the President and Secretary, respectively, of the Mammoth Vein Coal Company, a corporation, and acknowledged to me that they had executed the foregoing instrument as such President and Secretary for and on behalf of said corporation as its and their free and voluntary act and deed, for the purpose and consideration therein mentioned and set forth, and I do hereby so certify.

Witness my hand and notarial seal, this the 15th day of May 1906.

RANSOM GULLY, Jr.,
(Seal) Notary Public.

My com. exp. May 20th, 1908.

Certificate of Record.

State of Arkansas
County of Sebastian,
Greenwood District.

I, John E. Tatum, Clerk of the Circuit Court and Ex-Officio Recorded of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 26th day of December A. D. 1906 at 6 o'clock P. M. and the same is now duly recorded with the acknowledgements and certificates thereon. "Record
2569 Book 38 Page 109.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 29th day of December A. D. 1906.

(Seal) JOHN E. TATUM,
Circuit Clerk and Ex-Officio Recorder,
By R. A. Harper, Deputy Clerk.

Inventory of property
Owned by the Cherokee Construction Co.,
to be leased to,
The Mammoth Vein Coal Co.
Mine No. 6. (outside)

1 shaft tipple, including 1 shaker screen, 1 weight basket 2-5′ sheave wheels. (Shaker screen fitted with perforated sheets, flat sheets, 12 diamond screen bars 5′ long and 1 chute.)

Weigh Room.

1 Fairbanks scale
1 Radiator, with following fittings.
8′-1¼″ pipe
13′ 1″ pipe
1-1″ globe valve
2-1″ nipples
2-1″ ells
1-1¼″ unions
1-1¼″ ell.

2570 Coal Chute Trestle.

565′-16# rail. (Trestle, 5 pockets, #1 platform scale, #1 sump car, owned by M. V. R. Co., and not to be included in inventory.

Rock Trestle.

265′ rock trestle.
530′-12# rail (old)
2 Flat sheets 6′ x 8′ x ¼″
1 " " 5′ x 5′ c¼″
2 pairs of goose necks. (12# rail)
1 frog and seitch.

In Hoisting Shaft.

500′-1″ hoisting rope (2 years old)
2 self sumping cages.
120′-20″ pipe.
2-2″ ells.
1-2″ teel
1-2″ plug
107′-1½″ pipe
1 circle jet
1-1½″ globe valve.
1 reducer. 1¼x1½″

END